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Report of the Special Rapporteur on extreme poverty and human rights

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, prepared pursuant to Council resolution 35/19, focusing on the International Monetary Fund and its impact on social protection.

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I. Introduction

1. The present report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, has been prepared pursuant to Human Rights Council resolution 35/19, focusing on the International Monetary Fund (IMF) and its impact on social protection.[1]

2. The majority of low-income developing countries are already included in IMF programmes or are likely to be so in the near future,[2] yet fewer than one in five of the poorest 20 per cent of people in those countries is covered by any form of social protection. And any assistance they receive will only cover a mere 13 per cent of their consumption needs. Even in lower-middle-income countries, fewer than half of those living in poverty receive such assistance. Since the vast majority of the hundreds of millions of people thus living in penury and without any form of social protection are unable to enjoy most of their human rights,[3] the question arises as to what their own Governments are doing in response, and what role the international community plays.

3. No international institution exerts greater influence than IMF over issues such as distribution, including social protection. But for many years, it took the position that these issues were not its concern; it could take account only of macroeconomic issues narrowly defined. Other institutions were left to pick up the pieces in the social area, but could only do so within the confines of the fiscal space, if any, left open after IMF prescriptions had been adopted.

4. IMF has long been criticized for its disregard of "social issues" and its impact thereon. In 1987, when a ground-breaking and devastatingly critical report entitled *Adjustment with a Human Face*[4] was published by the United Nations Children's Fund (UNICEF), IMF subscribed to the original Washington Consensus, which prioritized "prudent macroeconomic policies, outward orientation and free-market capitalism".[5] The "imposition" of structural adjustment policies on many countries in Africa, Asia and Latin America were said by human rights groups and others to have further immiserated the living conditions of the poor.[6]

5. Such criticism, combined with political pushback, led to an "augmented Washington consensus" with a new emphasis on social safety nets and "pro-poor growth".[7] The advice subsequently proffered by IMF during the 1997 Asian financial crisis was widely faulted by Governments and commentators and, as the Asian recession abated and the developing country debt crisis was resolved, IMF receded into the background and underwent significant staff cutbacks. But the global financial crisis of 2007–2008 returned it to the centre of international economic governance. At its 2009 summit, the Group of 20

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[1] The Special Rapporteur is grateful to Christiaan van Veen for his superb research and analysis for the present report.

[2] According to IMF, 40 per cent of the 59 low-income developing countries now face significant debt-related challenges, and 60 per cent are at low or moderate risk. See IMF, "Macroeconomic Developments and Prospects in Low-Income Developing Countries — 2018" (15 February 2018), para. 72.

[3] The Special Rapporteur has elaborated on these linkages in previous reports.

[4] G. Cornia, R. Jolly and F. Stewart (eds.), *Adjustment with a Human Face: Protecting the Vulnerable and Promoting Growth* (1987).

[5] J. Williamson (ed.), "What Washington Means by Policy Reform", in *Latin American Adjustment: How Much Has Happened?* (April 1990).

[6] "[T]he fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society can and indeed must be protected", Committee on Economic, Social and Cultural Rights general comment No. 3 on the nature of States parties' obligations, para. 12.

[7] J. Williamson, "An Agenda for Restarting Growth and Reform", in *After the Washington Consensus: Restarting Growth and Reform in Latin America*, P. Kuczynski and J. Williamson, eds. (March 2003). See also A. Abrams, "The IMF's Role in Social Protection: Fund Policy and Guidance", Background Document No. BD/17-01/01 (5 July 2017).

committed $750 billion to expand IMF operations, leading its Managing Director to proclaim with justification that "the IMF is back".[8]

6. Earlier criticism, combined with the nature and scale of the new global crisis, prompted an internal reassessment at IMF,[9] including revisiting parts of the "neoliberal agenda".[10] This included developing the theory of "macro-criticality", explained below, to justify the possible inclusion of an expanded range of issues, such as social protection, in its analyses and prescriptions. As a result of those various changes, IMF considers that it has fundamentally changed its approach, as illustrated by a response to a question by its Managing Director, Christine Lagarde, at a press conference in 2014: "[S]tructural adjustments? That was before my time. I have no idea what it is. We do not do that anymore." [11] By 2016, some leading IMF economists were even conceding that neoliberalism had been oversold and that "the short-run costs [of austerity] in terms of lower output and welfare and higher unemployment have been underplayed".[12]

7. Many of the critics, however, are not convinced that the basic policy paradigm has changed. Some have characterized the changes at IMF as "a smokescreen designed to deflect criticism" and part of its "escalating commitment to hypocrisy" and have pointed to evidence that "structural conditionality remains alive and well", suggesting a return to the "old" IMF.[13] But IMF staff characterized such criticisms as "shadowboxing with neoliberal ghosts from the past", rather than acknowledging the deep changes that had occurred.

8. Although these questions are vitally important in terms of social protection and thus of human rights, a necessarily brief report, such as the present one, cannot aspire to do justice to the broader debate over whether IMF has reformed or been "born again" or is "still neoliberal".[14] Instead, the more modest, but still ambitious, goal is to examine the impact of IMF on the human rights of the poor through its work on social protection. At the outset, it should be noted that IMF, for all its homogeneity and hierarchy, is not a monolithic institution without any internal diversity of views or differences in operational practice. As with any complex international organization, its approach is evolving. The current Managing Director, like her predecessor, has championed major changes, including a newfound focus on issues such as inequality, gender equality, governance, climate change and social protection. Much of the new discourse, and the research underpinning it, is welcome from a human rights perspective, but the real test is whether it will be fully translated into operational reality, which is where new ideas meet entrenched institutional culture, vested interests and ideology.

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[8] A. Walker, "The International Monetary Fund returns", BBC, 24 April 2009, available at http://news.bbc.co.uk/2/hi/business/8015979.stm. The evolution of IMF in taking poverty eradication and related social issues more seriously over these years can be traced through the rebranding of its "Structural Adjustment Facility" to the "Enhanced Structural Adjustment Facility" in 1987, then to the "Poverty Reduction and Growth Facility" in 1999, renamed "Extended Credit Facility" in 2009.

[9] C. Ban and K. Gallagher, "Recalibrating Policy Orthodoxy: The IMF Since the Great Recession", in *Governance: An International Journal of Policy, Administration, and Institutions* (vol. 28, No. 2, April 2015), p. 141.

[10] As the below article points out, the "neoliberal" label is used more by critics than the architects of these policies, but it is a useful container term nevertheless. The neoliberal agenda generally refers to policies intended to increase market-based competition and decrease the role of the state in an economy. J. Ostry, P. Loungani and D. Furceri, "Neoliberalism: Oversold?", in *Finance & Development* (June, 2016).

[11] See transcript of the International Monetary and Financial Committee press briefing (12 April 2014), available at www.imf.org/en/News/Articles/2015/09/28/04/54/tr041214b.

[12] Ostry, Loungani and Furceri "Neoliberalism: Oversold?", p. 40.

[13] A. Kentikelenis, T. Stubbs and L. King, "IMF Conditionality and Development Policy Space, 1985–2014", in *Review of International Political Economy* (vol. 23, iss. 4, 2016), p. 556.

[14] S. Babb and A. Kentikelenis, "International Financial Institutions as Agents of Neoliberalism", in *The SAGE Handbook of Neoliberalism*, D. Cahill et al (eds.) (SAGE Publication, 2018) p. 16; and A. Broome, "Back to Basics: The Great Recession and the Narrowing of IMF Policy Advice", in *Governance: An International Journal of Policy, Administration, and Institutions* (vol. 28, No. 2, April 2015), p. 161.

9. The Special Rapporteur is grateful to IMF for its willingness to organize meetings with key actors, including member of its Executive Board, a Deputy Managing Director and senior staff of the Research Department, Strategy, Policy and Review Department, Fiscal Affairs Department, Legal Department, Communications Department, all five Area Departments, and the Independent Evaluation Office. With the exception of the Legal Department, which provided virtually no information, he is very satisfied with the cooperation of IMF.

10. Regrettably, the World Bank, despite repeated requests, refused to facilitate any meetings between the Special Rapporteur and World Bank social protection experts. It must be assumed that this was in retaliation for his 2015 report to the General Assembly, in which he concluded that the World Bank was, for most purposes, a "human rights-free zone".[15] It is nonetheless gratifying to see that the World Bank has now begun to change its approach in this regard in some areas.[16]

11. The Special Rapporteur is also grateful to civil society organizations, academic experts, other international officials and many others who provided inputs for the present report. He has also benefited greatly from the detailed IMF reports on social protection and published by its Independent Evaluation Office and by the International Organizations Clinic at New York University School of Law.[17]

II. Legal framework and IMF mandate

12. The Articles of Agreement of IMF confer on it the powers of oversight and to provide financial assistance and advice. Its stated purposes include contributing to "the development of the productive resources of all members as primary objectives of economic policy" and providing resources to countries with balance-of-payment issues so that they do not resort to "measures destructive of national or international prosperity". The Articles also require IMF to "respect the domestic social and political policies of members" in its surveillance and lending.[18] After reviewing these and related provisions, the General Counsel of IMF, François Gianviti, concluded that IMF was "a monetary agency, not a development agency", and that its task was thus "to maintain orderly exchange rates and a multilateral system of payments free of restrictions on current payments".[19]

13. In stark contrast to such formalism, a review of the mandate of IMF performed in 2010 after the financial crisis, acknowledged that the purposes in the Articles "speak to the issues of a bygone era", while the powers conferred "do not even reference today's most compelling issues". Where Mr. Gianviti had concluded that, if IMF wished to integrate human rights considerations in its decisions, the Articles should be amended, the 2010 review acknowledged the difficulty of the amendment process and concluded instead that "the Articles are sufficiently flexible to accommodate major reforms".[20]

14. A companion analysis, prepared by the Legal Department, starts with the formal position that the powers of IMF "are generally limited to those explicitly identified in the Articles", but then observes that it is authorized "to adopt decisions of general applicability ('policies') to provide more specific content" to its powers. Provided that they are consistent with the text of the Articles, those policies may adjust over time to take into consideration changing circumstances. But having set the scene for a degree of policy flexibility, the Legal Department then notes that, "since all of the enumerated purposes are

[15] See A/70/274, para. 68.

[16] Compare the heavy reliance on the Convention on the Elimination of All Forms of Discrimination against Women in World Bank, *Women, Business and the Law 2018* (Washington, D.C., 2018), with the determined non-engagement with the Convention in the same report in 2016.

[17] IMF, *The IMF and Social Protection* (Washington, D.C., 2018). Available at www.ieo-imf.org/ieo/files/completedevaluations/SP%20-%202017EvalReport.pdf.

[18] See article IV, section 3 (b); and the Guidelines on Conditionality (Decision No. 6056-(79/38)).

[19] F. Gianviti, "Economic, Social, and Cultural Human Rights and the International Monetary Fund" in P. Alston (ed.), *Non-State Actors and Human Rights* (2005) p. 135.

[20] See www.imf.org/external/np/pp/eng/2010/012210a.pdf.

of an economic nature, IMF is precluded from using its powers for political objectives".[21] That division of the IMF universe into matters that are either economic or political goes to the core of the problem of locating issues such as social protection, which are both economic and political but much else besides. In practice, the Legal Department seems not to have used its considerable influence to restrict or inhibit the developments described below, even though they amount to a major reinterpretation of the Articles and of the range of issues that may be considered to be within the mandate of IMF.

15. Policy evolution has been reflected mainly through "operational guidance".[22] A 2015 Guidance Note on Surveillance specifies that, while exchange rate, monetary, fiscal and financial sector policies are always expected to be covered by IMF surveillance, other issues are only to be assessed if they are macro-critical, which means that the issue "affects, or has the potential, to affect domestic or external stability, or global stability".[23] Little additional guidance is offered and IMF staff are encouraged to "exercise judgment", and to note that "there is scope … to innovate and push the analytical content beyond current practices".[24] There has indeed been much innovation, with account being taken of policies relating to jobs and growth, infrastructure, labour markets, social safety nets, public sector enterprises, governance, gender and climate change.[25] The position in practice appears to be that, where there is a will, and provided an issue is not problematically politically contentious, it can be treated as being macro-critical, thus falling within the mandate of IMF.

16. In the lending context, staff also enjoy "broad latitude"[26] when assessing the "criticality" of conditions imposed.[27] This applies in relation to issues within the "core areas of expertise" of IMF, but also outside that core provided that the determination of criticality is accompanied by "detailed explanations … along with a strong justification".[28] For non-core issues, staff are urged to draw, as far as possible, on the expertise of "other multilateral institutions, particularly the World Bank".[29]

III. Mandate flexibility in practice

17. Before focusing on how the potentially very flexible notion of macro-criticality has been approached in practice in relation to social protection, it is instructive to consider the macro-criticality of human rights, military expenditure, corruption, inequality and gender equality. The present analysis shows that the sole taboo at IMF seems to be human rights, although IMF analyses do in fact note the relevance of political conflict, violence and social unrest.

A. Human rights taboo

18. IMF has not adopted an official legal opinion in relation to human rights. When asked about its legal position, it points to a paper written in 2002 by Mr. Gianviti, and subsequently published in an academic volume.[30] The Special Rapporteur was informed that nothing had been published since then, either officially or as an academic paper, by any member of the sizeable Legal Department with any bearing on the approach of IMF to human rights. Mr. Gianviti's paper, although never officially endorsed by IMF and written

[21] See www.imf.org/external/np/pp/eng/2010/022210.pdf.

[22] While operational guidance is produced by staff and not endorsed by the Executive Board, both surveillance and conditionality guidance notes are discussed and approved by the Board.

[23] IMF, "Guidance Note for Surveillance under Article IV" (May 2015), p. 36.

[24] Ibid, Executive Summary.

[25] Ibid, p. 39.

[26] Abrams, "The IMF's Role in Social Protection", p. 6.

[27] IMF, "Revised Operational Guidance to IMF Staff on the 2002 Conditionality Guidelines" (August 2014).

[28] Ibid, p. 10.

[29] Ibid.

[30] Gianviti, "Economic, Social, and Cultural Human Rights", p. 113.

16 years ago, thus assumes surprising importance. The thrust of the paper can be summarized as follows: the International Covenant on Economic, Social and Cultural Rights is not applicable to IMF; its provisions have not attained customary international law status that would make them applicable independently of the Covenant; IMF promotes economic and social rights indirectly by contributing to conducive economic conditions; and IMF cannot promote human rights directly without contravening the Articles of Agreement.[31] The Deputy General Counsel of IMF informed the Special Rapporteur that this position remained unchanged. He reiterated that it was not bound by human rights norms, "except perhaps in cases of genocide".

19. Mr. Gianviti's paper does not address the question of civil and political rights, but IMF seems to assume without further explanation that the same analysis would apply to the two sets of rights. Essentially, the paper is an anachronism and serves IMF badly as a statement of current policy. It is rooted in the history of the 1950s and 1960s and focused heavily on the Heavily Indebted Poor Countries Initiative, which was important in 2002. And it long predates the fundamental changes that are said to have occurred since the global financial crisis of 2007–2008.

20. Mr. Gianviti's appeal to the analogy of European law to strengthen the position of IMF underscores its anachronistic nature. The paper notes that "the European Community, not being a party to the European Convention on Human Rights [the Convention for the Protection of Human Rights and Fundamental Freedoms], is not bound by its provisions". But today, the European Union considers itself bound by the provisions of the Convention, which have the status of general principles of law.

21. Mr. Gianviti's focus on whether IMF is formally bound under international law by the Covenant's provisions has been much criticized.[32] In fact, his paper has very little to say about the crucial issue of how IMF should, in practice, take account of human rights considerations in their many diverse manifestations. The consistent practice of IMF has been to sidestep them and assume they are simply not relevant to macroeconomic policy.[33] However, this is not the occasion for a wide-ranging review of such matters, which IMF itself should undertake.

B. Grey zones: corruption and military spending

22. IMF first addressed corruption in depth in a 1997 guidance note on "governance issues".[34] Increased attention to the issue at IMF and the World Bank at that time reflected a realization on the part of the proponents of the Washington Consensus that corruption had undermined the institutions that had been key to successful policy reform and economic development.[35] The note followed the World Bank's definition of corruption as the "abuse of public office for private gain". The IMF approach mainly involved advocacy of "policies and the development of institutions and administrative systems that aim to eliminate the opportunity for rent seeking, corruption and fraudulent activity".[36] It would only respond to specific instances of corruption when there was "reason to believe they could have significant macroeconomic implications", such as when "the amounts involved are

[31] For a recent reiteration of position of IMF on human rights, see www.ohchr.org/Documents/Issues/IEDebt/impactassessments/IMF.pdf.

[32] For important critiques see: Statement by the Committee on Economic, Social and Cultural Rights (E/C.12/2016/1); M. Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Hart Publishing, 2003); B. Ghazi, *The IMF, the World Bank Group and the Question of Human Rights* (Transnational Publishers, 2005); and A. McBeth, *International Economic Actors and Human Rights* (Routledge, 2009).

[33] A speechwriter for Ms. Lagarde is reported as saying "[y]ou cannot put human rights in a speech, it'll be taken out". T. Reinold, "The Path of Least Resistance: Mainstreaming 'Social Issues' in the International Monetary Fund", in *Global Society*, vol. 31, iss. 3, 2017, p. 401.

[34] IMF, "Guidance Note on the Role of the IMF in Governance Issues" (August 1997).

[35] D. Rodrik, "Goodbye Washington Consensus, Hello Washington Confusion?", in *Journal of Economic Literature*, vol. 44, No. 4 (December 2006), pp. 973–987.

[36] "Guidance Note", p. 2.

potentially large or the corruption may be symptomatic of a wider governance problem".[37] Recent examples of countries where IMF considered corruption to be "macro-critical" are Mozambique,[38] where enormous loans made to State-owned enterprises were concealed,[39] the Congo, where authorities recently announced plans to arrest corrupt officials in order to meet IMF loan conditions,[40] and Ukraine.[41] But in other States experiencing major corruption scandals, IMF has confined itself to general observations about the desirability of something being done. Such timidity contrasts with its strong measures to combat money laundering and the financing of terrorism,[42] in relation to which it has provided technical assistance to 120 countries.[43]

23. IMF is currently in the midst of a major review designed to make its corruption policy more effective.[44] Challenges include the risk of becoming involved in politically charged debates and of not being perceived as "even-handed",[45] how to determine macro-criticality and what information sources to rely upon,[46] and the need for specialized staff with appropriate expertise. While none of those issues is straightforward, failure to take a strong line on an issue such as large-scale or systemic corruption, which has major macroeconomic ramifications, leaves a large dent in the credibility of IMF.[47] A stronger anti-corruption policy would also enable IMF to contribute to the realization of target 16.5 of the Sustainable Development Goals.

24. At IMF, military expenditure is an even more sensitive topic than corruption. However, despite the clear links between reigning in military spending on the one hand, and promoting fiscal consolidation while creating fiscal space for social protection on the other,[48] there is an almost complete absence of the subject from IMF macroeconomic analyses. This represents a major strike against its claims to be above politics and to go wherever the economic facts lead it. It is true that isolated examples of IMF engagement with military spending can be found,[49] and relevant military spending data are made available through its *Government Financial Statistics Yearbook*. But, in general, Governments still seem to believe that "national security, and judgments regarding the appropriate level of military expenditures required to assure that security, [are] a sovereign prerogative of national governments and ... not in the domain of the work of the Fund".[50]

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[37] Ibid, p. 5.

[38] IMF, "Republic of Mozambique: 2017 Article IV Consultation" (March 2018).

[39] See www.bbc.com/news/world-africa-36158118.

[40] "IMF Staff Concludes Visit to The Republic of Congo", press release (20 December 2017); and www.bloomberg.com/news/articles/2018-03-06/congo-steps-up-battle-against-corruption-after-imf-criticism.

[41] IMF, "Ukraine 2016 Article IV Consultation" (April 2017).

[42] See, e.g., IMF, "Malta: 2017 Article IV Consultation" (January 2018), para. 26.

[43] C. Lagarde, "Stepping up the Fight against Money Laundering and Terrorist Financing", IMF blog (26 July 2017).

[44] Shortly before the present report was finally submitted, IMF published a new policy paper that devotes extensive attention to policy in relation to corruption. IMF "Review of 1997 Guidance Note on Governance" (April 2018). The content of the present report is not reflected in that analysis.

[45] C. Lagarde, "Corruption Disruption", IMF blog (8 December 2017).

[46] In calling for stronger anti-corruption legislation in Ukraine, IMF relied on an opinion by the European Commission for Democracy through Law (the Venice Commission) on the draft law on anti-corruption courts, available at www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)020-e.

[47] The same might, of course, be said in relation to a failure to take account of large-scale human rights violations when they also have clear-cut macroeconomic consequences.

[48] I. Ortiz, M. Cummins and K. Karunanethy, "Fiscal Space for Social Protection and the SDGs: Options to Expand Social Investments in 187 Countries", Extension of Social Security Working Paper No. 48 (2017). Available at www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=51537.

[49] S. Gupta, L. De Mello and R. Sharan, "Corruption and Military Spending", IMF Working Paper (2000); J. Stevenson, "IFIs and military expenditures", in *Adelphi Papers* (vol. 40, iss. 336), p. 29 (2000); and H. Davoodi et al, "Military Spending, the Peace Dividend, and Fiscal Adjustment", *IMF Staff Papers* (vol. 48, No. 2), p. 290 (2001).

[50] See www.imf.org/external/SelectedDecisions/Description.aspx?decision=EBM/91/138.

25. But such views are surely "macro-incompatible", especially after a decade in which military expenditures have risen 64 per cent in Asia and Oceania, 48 per cent in Africa, 19 per cent in the Middle East and 6 per cent in Europe.[51] In the years ahead, even more dramatic increases look likely. While the issue is a potential minefield for IMF, its impact on the overall macroeconomic equation is so great that it can hardly be ignored. It is the proverbial elephant in the room, and it behoves IMF to engage with it and to explore what options might be feasible to draw the attention of Governments and others to the macroeconomic significance of military spending.[52]

C. Precedents for change: economic and gender inequality

26. The work of IMF on social protection is closely linked to its work on tackling growing inequality and promoting gender equality.

27. Oxfam has praised IMF for becoming a global leader in highlighting the economic inequality crisis in recent years.[53] Indeed, comments by the Managing Director have attracted much attention, and IMF research has shown that "lower net inequality is robustly correlated with faster and more durable growth" and "redistribution appears generally benign in terms of its impact on growth." Those findings challenge the orthodox views about an inevitable trade-off between redistribution and growth,[54] and have implications for IMF policy advice.[55] But considerable tensions remain between that theory and IMF practice, which is still more likely to be preoccupied with efficiency and targeting than redistribution aimed at lowering inequality.[56] While change might be afoot, it has not yet consistently made its way into policy advice.[57] One observer has suggested that the focus of IMF on inequality "is beginning ... to have an impact through pilot analysis in 25 countries",[58] but others are less persuaded. Thus, Oxfam concludes that those "pilots" fail to "fully explore alternatives to rapid fiscal and monetary tightening", "focus on compensating 'losers' rather than questioning the structural reforms themselves", and tend to see social protection "as a Band-Aid to compensate for the negative effects of other measures".[59] IMF has not responded publicly to any of those criticisms, except in staff comments at the annual meeting's Civil Society Policy Forum.

28. Until around 2013, "gender" had not been a term that could easily be found in IMF documents.[60] Initially, IMF had focused on female labour force participation and income inequality.[61] In 2015, gender was included as a structural issue that staff could consider in Article IV surveillance,[62] and gender pilot studies were then undertaken in Article IV

[51] See http://visuals.sipri.org/.

[52] Research suggests that moving towards gender parity among IMF economists might lead to greater attention being paid to the negative economic and social consequences of high levels of military spending. M. May, G. McGarvey and D. Kucera, "Gender and European Economic Policy: A Survey of the Views of European Economists on Contemporary Economic Policy", in *Kyklos International Review for Social Sciences*, (vol. 71, No. 1), February 2018, pp. 162–183.

[53] Oxfam, "Great Expectations: Is the IMF turning words into action on inequality?" (October 2017), p. 2.

[54] J. Ostry, A. Berg and C. Tsangarides, "Redistribution, Inequality, and Growth", IMF Staff Discussion Note (February 2014).

[55] P. Loungani and J. Ostry, "The IMF's Work on Inequality: Bridging Research and Reality", available at https://blogs.imf.org/2017/02/22/the-imfs-work-on-inequality-bridging-research-and-reality/.

[56] IMF Policy Paper, "Fiscal Policy and Income Inequality" (2014), p. 22 and 30–32.

[57] "Tackling Inequality", *Fiscal Monitor* (October 2017).

[58] J.A. Ocampo, J.M. Griesgraber, M. Martin and N. Coplin, "Are the Multilateral Organizations Fighting Inequality?" (Friedrich Ebert Stiftung, July 2017), pp. 10–11.

[59] "Great Expectations", p. 21.

[60] Bretton Woods Project, "The IMF and Gender Equality: A Compendium of Feminist Macroeconomic Critiques" (October 2017), p. 12.

[61] K. Elborgh-Woytek et al, "Women, Work, and the Economy: Macroeconomic Gains from Gender Equity", IMF Staff Discussion Note (2013); and C. Gonzalez et al, "Catalyst for Change: Empowering Women and Tackling Income Inequality", IMF Staff Discussion Note (2015).

[62] "Guidance Note for Surveillance", p. 39.

reports.[63] More recently, a number of IMF loans, including to Egypt and Jordan, have included "gender conditionalities".

29. These are very important steps forward, but much remains to be done. Observers have criticized IMF for focusing too much on labour-market participation and micro-level gender budgeting decisions.[64] An example of IMF ignoring gender in the broader macroeconomic context is the constitutional amendment passed by the Government of Brazil in 2016, capping public spending for 20 years, which has been characterized as "the mother of all austerity plans".[65] IMF very publicly supported the initiative. Brazilian researchers claim that, subsequent to the amendment, "expenditures specifically benefitting women were reduced by 58 per cent".[66] Unsurprisingly, Oxfam has called on IMF to focus on the gender impact of its core macroeconomic advice, as well as on the creation of fiscal space to support quality public care services and the discontinuation of "policy advice that is shown to have negative impacts on gender equality".[67]

30. In dealing with an issue like gender equality, IMF also needs to overcome its aversion to ever mentioning human rights. Even a study showing convincingly that legal restrictions strongly hinder female labour force participation in low-income countries, calling for their elimination, advocating "constitutionally guaranteed equity between men and women [as] the absolute minimum" and ideally the "guarantee [of] legal equality to women in all dimensions" made no reference at all to human rights, women's human rights or the Convention on the Elimination of All Forms of Discrimination against Women. It did, however, repeat several times, that its recommendations "should be considered against the backdrop of countries' broadly accepted cultural and religious norms".[68] No comparable caveat was included in relation to the 189 States that had ratified and accepted the Convention's binding legal obligations. As noted above,[69] the World Bank has now managed to move beyond this form of "airbrushing" human rights obligations out of the picture and it is to be hoped that IMF will follow suit.

IV. Social protection

Introduction

31. In the aftermath of the global financial crisis and in response to the increasing backlash against neoliberalism, IMF has gradually moved over the past few years to accept the macro-criticality of some elements of social protection. Five recommendations emerging from a 2017 report of the Independent Evaluation Office of those initiatives were subsequently supported by the Executive Board.[70] Given the inconsistent and contingent past practice at IMF and the uncertainty of its staff about its role, the report's key message was the need for a clear strategic framework to guide IMF involvement in social protection. In January 2018, a management implementation plan[71] announced the preparation of a paper to be discussed by the Executive Board in February 2019 that would address a definition of social protection, the macro-criticality of social protection, the affordability and efficiency of social protection systems, potential forms of IMF engagement with social

[63] ActionAid, "Women as 'underutilized assets'" (October, 2017).

[64] K. Donald and N. Lusiani, "The IMF, Gender Equality and Expenditure Policy" (Bretton Woods Project and the Center for Economic and Social Rights, 2017).

[65] S. Sims, "Brazil passes the mother of all austerity plans", *The Washington Post*, 16 December 2016.

[66] G. David, "The impacts of IMF-backed austerity on women's rights in Brazil", in *Bretton Woods Observer* (Spring 2018), available at www.brettonwoodsproject.org/2018/03/impacts-imf-backed-austerity-womens-rights-brazil/.

[67] "Great Expectations", p. 7.

[68] C. Gonzales et al, "Fair Play: More Equal Laws Boost Female Labor Force Participation", IMF Staff Discussion Note (February 2015).

[69] IMF, *The IMF and Social Protection*.

[70] Ibid.

[71] IMF, "Implementation Plan in Response to the Board-endorsed Recommendations for the IEO Evaluation Report — 'The IMF and Social Protection'" (January 2018).

protection, the position of IMF on universal access to and targeting of social programmes and collaboration with other institutions. The strategic framework would also provide guidance on effective programme design, covering both the General Resources Account Arrangements and concessional lending. The latter would draw on a June 2017 IMF policy paper,[72] a guidance note to be issued in the first half of 2018 and the 2018 Review of Conditionality and the Design of IMF-Supported Programmes.

32. The report of the Independent Evaluation Office and the response of the Executive Board drew mixed reactions from external stakeholders. Some special procedure mandate holders, as well as a group of 53 economists, academics and development experts, were strongly critical.[73] IMF has committed to consult with civil society on the development of its new social protection strategy, but that process has to date been relatively opaque[74] and formalistic, reflecting the culture of control at IMF and the relatively few civil society organizations that focus on scrutinizing its activities.

33. The report of the Independent Evaluation Office, along with its annexes and background papers, is nonetheless very helpful and informative. Its main shortcomings are its acknowledged failure to address two key issues: (a) the impact of IMF interventions on the welfare of vulnerable groups; and (b) whether social protection has increased or decreased as a result of IMF-supported programmes.[75] By way of justification, the Office claimed that the first would have required a much larger study and the second was not feasible due to "conceptual and attribution problems". And IMF officials with whom the Special Rapporteur spoke argued strongly that there were too many variables at play for that analysis to be done meaningfully. However, comprehensively avoiding such central issues calls into question the certainty with which IMF makes various policy prescriptions. Some attempt to evaluate impact is essential if it is to be seen to be acting responsibly and in an evidence-based manner.[76]

Defining social protection

34. The report of the Independent Evaluation Office defines social protection as a variety of policy instruments providing cash or in-kind benefits to vulnerable individuals or households, including: (a) social insurance (such as public pension schemes); (b) social assistance (such as government transfers to the poor); and (c) labour market interventions for the unemployed (such as unemployment insurance and active labour market policies). The report also addresses food and energy subsidies, but not broader development or poverty reduction policies, such as education and health policy.[77] Its annex lists different definitions of social protection used by IMF and other organizations.[78] Work currently under way to identify a uniform definition for the purposes of IMF is essential since the Special Rapporteur's interviews confirmed considerable uncertainty and disagreement within IMF about what social protection means.

35. The most important issue is the overall philosophy underpinning social protection. The main debate in defining social protection has been between a "social safety net" approach and a human rights or "social citizenship" approach.[79] The definition of a social

[72] IMF, "Social Safeguards and Program Design in PRGT and PSI-Supported Programs", Policy Paper (June 2017).

[73] See www.ohchr.org/Documents/Issues/Development/IEDebt/Open_Letter_IMF_21Dec2017.pdf; www.networkideas.org/news-analysis/2017/12/53-economists-write-to-imf-directors-on-approach-to-social-protection/; and www.brettonwoodsproject.org/2017/09/ieo-finds-imf-follows-nebulous-standard-social-protection-engagement/.

[74] In strong contrast to the World Bank's lengthy consultations over the updating of its social safeguard policies in 2016.

[75] IMF, *The IMF and Social Protection*, pp. 23–24.

[76] On the importance of evaluation, see M. Ravallion, "The World Bank: Why it is Still Needed and Why it Still Disappoints", in *Journal of Economic Perspectives*, vol. 30, No. 1, Winter 2017, pp. 82–84.

[77] IMF, *The IMF and Social Protection*, p. 4.

[78] Ibid, annex 1.

[79] See report of the Special Rapporteur on extreme poverty and human rights (A/69/297), para. 21.

protection floor, according to the International Labour Organization (ILO), World Health Organization (WHO) and the United Nations, as demonstrated in the Social Protection Floor Initiative, reflects a human rights approach.[80] This is not, as many economists assume, a rigid one-size-fits-all approach that purports to have all the answers as to how hard choices on resource allocation are to be made. Rather, it identifies an overall set of objectives and offers elements of an accountability framework. Thus, while the Initiative views social protection in terms of human rights, the scope and coverage of each State's floor is nationally defined while respecting principles such as non-discrimination, gender equality and social inclusion. The aim is to ensure universal protection, but that does not mean that every person receives the same benefit. Rather, the goal is to prevent or alleviate poverty, vulnerability and social exclusion, and the floor should include basic social security guarantees for health care, as well as income security for children, older persons and those unable to work, especially in cases of sickness, unemployment, maternity and disability.

36. By contrast, the social safety net approach generally adopted by IMF is often so minimal that it barely warrants the term "social protection". In the words of the Independent Evaluation Office, the view of IMF is that "[s]ocial safety nets are necessary to mitigate adverse short-term effects of fiscal adjustment, economic reforms, or external shocks on vulnerable population groups".[81] In essence, social protection is a short-term fix to help the "most vulnerable" to overcome temporary economic hardship. Often, that group is not coterminous with the worst-off in society, but with those hit by the economic adjustments IMF is promoting. Furthermore, affordability is the overriding consideration, defined in almost circular terms that assume that responsible fiscal consolidation will be unable to provide a genuine floor to ensure the survival of those living in extreme poverty. The interest of IMF is in mitigation, not transformation, and social protection is embraced for largely pragmatic programmatic considerations, rather than for the principled reason that any macroeconomic framework should protect those who cannot protect themselves.

37. The World Bank, the key international supporter of the safety net approach as a form of social risk management,[82] has now formally endorsed the ILO/WHO/United Nations social protection floor approach, and IMF would normally be expected to follow suit.

Targeting

38. For practical purposes, the main debate between proponents of "safety nets" and "social protection floors" concerns the principle of "targeting", the idea that only the "most vulnerable" should benefit from redistribution in the form of in-kind and cash benefits. IMF "has been a strong proponent of targeting",[83] especially in analyses of income inequality,[84] public expenditure reform[85] and energy subsidy reform.[86] Indeed, it often seems to be treated as an end in itself. Since 2009, only 15 per cent of IMF fiscal consolidation programmes for low-income countries has required the protection of vulnerable groups, and most of the relevant conditionalities "focused on improving the targeting […] of the social safety net".[87]

39. IMF has also strongly opposed universal programmes in some situations. Thus in 2017, after years of pressure from IMF,[88] Mongolia agreed to restrict the scope of the previously universal "Child Money" programme offered to the poorest 60 per cent of its

[80] ILO, Social Protection Floors Recommendation, 2012 (No. 202).
[81] IMF, *The IMF and Social Protection*, p. 11.
[82] World Bank, *World Development Report 1990: Poverty* (1990), p. iii.
[83] IMF, *The IMF and Social Protection*, p. 11.
[84] IMF "Fiscal Policy and Income Inequality", p. 25
[85] IMF, "Public Expenditure Reform: Making Difficult Choices" (April 2014), p. 32.
[86] IMF, "Energy Subsidy Reform: Lessons and Implications" (January 2013), p. 30.
[87] IMF, "Social Safeguards", p. 16.
[88] Independent Evaluation Office, "The IMF and Social Protection: Seven Low-Income Country Cases" (July 2017), p. 41, according to which "The IMF consistently favored targeted (means-tested) benefits over the universal Child Money entitlement".

children, which has since been raised again to 80 per cent.[89] That structural benchmark in the IMF loan has reportedly been strictly enforced.[90] Similarly, in January 2018, IMF announced that Kyrgyzstan would "amend the law on universal child allowances to reintroduce targeting".[91] That policy change is said to have been adopted following the IMF review of the country's Extended Credit Facility.[92]

40. Nonetheless, recent research on targeting in sub-Saharan Africa presents a compelling challenge to the logic of targeting, assuming the objective is to reduce poverty, rather than to promote neoliberal orthodoxy.[93] The authors of that research explore key factors affecting the design and implementation of anti-poverty policies. The first is information, for which they demonstrate that the proxy means tests — consistently promoted for that purpose by IMF and others — yield highly unsatisfactory results in practice. They conclude that the test "misses many of the poorest households in almost all countries: on average, 80 per cent of poor households are counted as non-poor by the test, and 40 per cent of non-poor households are counted as poor". The second factor is incentive effects, where they argue that targeted policies encourage non-poor people to change their behaviour in order to qualify for benefits intended for the poor. And the third factor is political economy, which, as discussed below, suggests that policies targeted only at the poorest will not receive sufficient political support from the elites and middle classes who dominate political decision-making. The conclusion to be drawn is that anti-poverty programmes with broader coverage, rather than finely targeted ones, are much more likely to reduce poverty.

41. A recent analysis published in the IMF *Fiscal Monitor* goes tentatively in the same direction by acknowledging that targeting requires adequate administrative capacity and that, where such capacity is lacking, there is often "undercoverage of the poor and leakage of benefits to the rich".[94] As a result, the analysis cautiously explores the option of universal basic income schemes as a "second-best" alternative to targeted social protection. Consistent with that approach, a recent IMF Article IV report on Mozambique encouraged the continuation of "efforts to improve coverage and generosity" of the non-contributory social protection system and noted the Government's shift from a targeted, charity focus to a rights-based universal benefit approach.[95] By IMF standards, such an approach seems wholly anomalous.

Social protection practice

42. The idea of social protection as "a certain minimum of justice, or fairness",[96] is in fact relevant to all of the core work of IMF. One Executive Director explained it well when he told the Special Rapporteur that the work of IMF in any of its five main pillars — monetary, fiscal, financial, balance of payments or structural policies — could either promote or disrupt social protection. Nevertheless, IMF "has traditionally approached

[89] IMF, "Mongolia: First and Second Reviews under the Extended Fund Facility" (December, 2017), p. 10.

[90] See S. Kidd, "Mongolia and Kyrgyzstan lose out in their struggle with the IMF over the targeting of child benefits", Development Pathways, 21 February 2018. Available at www.developmentpathways.co.uk/resources/mongolia-kyrgyzsg-child-benefits/. For a response by the IMF, see www.developmentpathways.co.uk/resources/mongolia-kyrgyzsg-child-benefits/#comment-1358.

[91] See IMF, "IMF Staff Concludes Visit to the Kyrgyz Republic", press release (31 January 2018), available at www.imf.org/en/News/Articles/2018/01/31/pr1834-imf-staff-concludes-visit-to-the-kyrgyz-republic.

[92] Kidd, "Mongolia and Kyrgyzstan lose out".

[93] The research is summarized in C. Brown, M. Ravallion and D. Van de Walle, "Reaching Poor People", in *Finance & Development* (December 2017), pp. 48–51.

[94] IMF, "Tackling Inequality", p. 16.

[95] IMF, "Republic of Mozambique", p. 12.

[96] T. Judt, *Postwar: A History of Europe since 1945* (Penguin Books, 2005), p. 76.

social protection from the standpoint of fiscal policy",[97] as illustrated by the cases of subsidy reform and social spending floors.

Subsidy reform

43. One third of IMF arrangements approved during the period 2006–2015 contained structural conditionality pertaining to energy price subsidies.[98] Reforming such subsidies makes perfect economic sense: they depress growth, are regressive, discourage investment, crowd-out social spending, diminish competitiveness, incentivize smuggling, negatively impact the balance of payments, encourage overconsumption, and contribute to pollution that exacerbates climate change and negatively impacts individual health.[99] In practice, however, reform efforts must take account of political economy considerations, as shown by recent experience in many countries, including the Islamic Republic of Iran[100] and Tunisia.[101] Acknowledging such tensions, IMF has generally advised that subsidy reform should be accompanied by the reallocation of part of the savings to "well-targeted", "well-designed" and "pro-poor" social protection programmes.[102]

44. However, experience demonstrates that these seemingly neat and rational prescriptions beg more questions than they answer. First, history shows that social protection systems have gained traction where they were not politically divisive. As one author observes about Western Europe, "although the greatest immediate advantage was felt by the poor, the real long-term beneficiaries were the professional and commercial middle-class".[103] Similarly, it has been noted that, while "welfare States are sometimes seen as an achievement of the industrial working classes ... they mostly came about through broad coalitions representing farmers, middle classes and professionals as well. Furthermore, the most extensive, most durable welfare States are generally those that serve the interests of the broadest and most powerful coalitions."[104] The rapid elimination of regressive but universal price subsidies to be replaced by limited social protection programmes for the poorest will garner very little political support from the key political players, thus undermining the political (rather than fiscal) sustainability of such reforms. Unsurprisingly, ILO recorded 322 "social protection reforms" worldwide in 2017, only 5 per cent of which had been implemented to address the needs of the poor or extreme poor.[105]

45. Second, while price subsidies are often deeply rooted in a country's political and institutional structure, the "pro-poor" social protection programmes that replace them (such as cash transfer programmes) are often entirely or largely new, and thus easily subject to rollback, leaving many of the poor, and non-poor, uncovered.[106] While IMF, in its role as emergency lender, may have significant leverage over a Government to undertake subsidy reform in times of crisis, there is a tension between the short-term focus of IMF and the significant time it takes to invest in and build up a proper social protection system, a problem that is unlikely to be solved only by devoting more resources to addressing social protection issues in Article IV surveillance.

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[97] IMF, *The IMF and Social Protection*, p. 11.

[98] Ibid, p. 67.

[99] See Clements et al, *Energy Subsidy Reform: Lessons and Implications* (Washington, D.C., 2013), ch. 3.

[100] See Development Pathways, "Role of IMF-backed elimination of universal social protection in protests", available at www.developmentpathways.co.uk/resources/role-imf-backed-elimination-universal-social-protection-protests/.

[101] U. Laessing and T. Amara "Tunisia seen softening economic reforms to avoid unrest", Reuters (4 December 2017).

[102] Clements et al, *Energy Subsidy Reform*, pp. 20–21; IMF, *The IMF and Social Protection*, p. 25; and IMF, "Social Safeguards", p. 22.

[103] Judt, *Postwar*, p. 76.

[104] David Garland, *The Welfare State: A Very Short Introduction* (2016), p. 41.

[105] ILO, Social Protection Measures throughout the World: January to December 2017 (2018).

[106] See reports of the Special Rapporteur on his mission to Saudi Arabia (A/HRC/35/26/Add.3, pp. 7–10) and on his mission to Mauritania (A/HRC/35/26/Add.1, pp. 14–16).

46. Third, proposing to replace one social protection system (subsidies) with more "efficient" systems starts from the assumption that highly complex and politically sensitive systems can be successfully created on a drawing board. However, experience shows that successful rights-respecting systems are the outcome of "contestation, be it from the electorate, from competition between political parties, or from public, civil society pressure".[107]

47. Finally, fiscal savings are one of the key attractions of subsidy reform, for IMF and for Governments. Given the strong preference of IMF for macrostability, which favours minimizing public expenditures, and most Governments' preference to use savings for more politically popular programmes, it is unsurprising that many subsidy reforms lead to significant net reductions in social protection spending.[108]

48. None of this is to suggest that energy subsidy reform is undesirable, but that serious efforts to establish alternative social protection systems require a more concerted and committed approach than has generally been used to date. IMF is well aware of the obstacles to far-reaching reforms,[109] but instead of embracing a politically and socially sustainable social protection policy, it emphasizes communications strategies, sequencing and "depoliticization" as solutions. In other words, rather than tackling the more complex substantive issues, the challenge is seen largely as a question of marketing.

Social spending floors

49. In theory, IMF has given strong recognition to social protection through the inclusion of "indicative targets" for social spending floors, especially in loan agreements for low-income countries. The goal is to maintain or increase public spending on education and health care and sometimes on social safety nets. Since 2009, about 90 per cent of programmes for low-income countries has included such targets. But IMF itself acknowledges severe shortcomings in that approach. Some targets are too broad to be meaningful (covering total spending on health and education, for example) or include spending on infrastructure and other budget lines not directly related to social protection. And memoranda of understanding between Governments and IMF "often lack details on coverage and monitoring, and on reporting arrangements".[110]

50. External critiques have been even stronger. One study showed that social spending floors for sub-Saharan African countries since 2000 had been implemented only around 50 per cent of the time, with even lower success rates in West Africa. And even in contexts in which IMF balanced budget conditions are met, the accompanying social spending floors are generally not.[111] This may be because spending floors are non-binding indicative targets, while key macroeconomic targets in IMF loans are binding. While IMF claims that public spending on education increases in low-income countries that implement IMF-supported programmes, and that there is no statistically significant effect on health spending,[112] those claims have been strongly contested.[113] Critics have argued that the 2017 IMF Policy Paper is methodologically unsound,[114] and that IMF programme participation

[107] Gabriele Koehler, "The Politics of Rights-Based Transformative Social Policy in South and Southeast Asia", in *International Social Security Review* (Vol. 70, Issue 4, 2017), p. 107.

[108] "For example, in Ghana, the eliminated fuel subsidy would have cost over US$1 billion in 2013, whereas the targeted LEAP programme costs only about US$20 million per year (where did the rest of savings go?)." Ortiz, Cummins, and Karunanethy, p. 7. In Mauritania, the elimination of food subsidies was expected to provide a windfall for the general budget, rather than for other social protection activities. See A/HRC/35/26/Add.1, para. 59.

[109] See Clements et al, *Energy Subsidy Reform*, ch. 4.

[110] IMF, "Social Safeguards", pp. 13–14.

[111] Stubbs and Kentikelenis, "Targeted Social Safeguards in the Age of Universal Social Protection: the IMF and Health Systems of Low-Income Countries", in *Critical Public Health* (Vol. 28, Issue 2, 2018), pp. 136–37.

[112] IMF, "Social Safeguards", p. 11.

[113] Stubbs et al, "The IMF and Government Health Expenditure: A Response to Sanjeev Gupta", in *Social Science & Medicine* (vol. 181, 2017), pp. 202–204.

[114] Stubbs and Kentikelenis, "Targeted Social Safeguards", pp. 133–134.

actually "has no statistically significant effect on education spending, but is associated with decreases in health spending".[115] However, whatever the outcome of that debate, there is little evidence to suggest that non-binding social spending targets are likely to be effective in achieving meaningful social protection.

Cooperation with other international organizations

51. The past decade has seen increased international attention to social protection and inter-institutional cooperation. The United Nations System Chief Executives Board for Coordination adopted the Social Protection Floor Initiative in 2009 as a key response to the global crisis, and Member States endorsed it at the United Nations Conference on Sustainable Development, as did the Group of 20 and ILO (in its Recommendation No. 202). Also in 2012, the Social Protection Inter-agency Cooperation Board, co-chaired by the World Bank and ILO, was set up to coordinate work in this area. Furthermore, Goal 1.3 of the Sustainable Development Goals calls on countries to implement "nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable".

52. However, social protection cooperation between IMF and United Nations agencies, including ILO, has been marginal at best.[116] In practice, IMF and UNICEF have had a complicated relationship since the publication of *Adjustment with a Human Face*. Following the 2008 financial crisis, the two organizations sought closer cooperation by undertaking social protection pilot studies in 11 countries. However, the well-publicized and critical 2011 report caused considerable tension between the two organizations.[117] The pilot studies reported some positive results in, for example, Burkina Faso, the Congo and Mozambique, but since that time, with the exception of Malawi, coordination has faltered.

53. There was little cooperation between IMF and ILO until 2010, when the two executive heads agreed to collaborate on the Social Protection Floor Initiative,[118] and on three pilot cases. Two failed, but in Mozambique, inter-agency cooperation succeeded until the relevant personnel changed in 2013, at which point cooperation ceased.[119] Despite the commitment of the Managing Director of IMF to the Initiative in 2012[120] and 2014,[121] cooperation between ILO and IMF has stalled.

54. In other areas, IMF has also been reluctant to cooperate with other international organizations with regard to social protection. Between 2012 and 2017, IMF representatives rarely attended meetings of the Social Protection Inter-agency Cooperation Board.[122] In 2018, IMF announced that it would attend, but only "when the issues under discussion are particularly relevant to the Fund's work".[123] The lack of cooperation described above might be explained by different conceptions of social protection, by the longstanding determination of IMF to remain independent of the United Nations, or the fact that IMF is only committed to the Sustainable Development Goals in so far as they fall "within the scope of its mandate" and has expressed no particular interest in Goal 1.3.[124]

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[115] Ibid, p. 135.

[116] "On the other hand, almost 75 per cent ... of survey respondents ... reported minimal to no interaction with UN agencies (including the ILO)", IMF, *The IMF and Social Protection*, para. 61.

[117] I. Ortiz, J. Chai and M. Cummins, "Austerity Measures Threaten Children and Poor Households: Recent Evidence in Public Expenditures from 128 Developing Countries", Social and Economic Policy Working Paper (UNICEF, 2011); and Abrams, "The IMF's Role in Social Protection", p. 18.

[118] IEO, "IMF Collaboration with Partner Institutions on Social Protection", Background Document (July 2017), p. 11.

[119] Ibid, p. 13.

[120] C. Lagarde, "Back to Rio — the Road to a Sustainable Economic Future" (IMF, 12 June 2012), available at www.imf.org/en/News/Articles/2015/09/28/04/53/sp061212.

[121] IMF "The Managing Director's Global Policy Agenda", available at www.imf.org/external/np/pp/eng/2014/100314.pdf.

[122] IEO, "IMF Collaboration", p. 30.

[123] IMF, "Implementation Plan".

[124] See www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/46/Sustainable-Development-Goals.

V. Conclusions and recommendations

Centrality of IMF

55. **IMF is the single most influential international actor not only in relation to fiscal policy but also to social protection, even if both it and its critics might prefer that this were not the case. Even for high income economies, its Article IV surveillance reports and its research frame much of the broader debate. IMF deserves credit for recent policy reforms through which it has acknowledged that it is much more than a monetary agency, although concrete change on the ground has been slower to take effect.**

Social protection as genuinely macro-critical

56. **Fiscal sustainability is important, but it can be made compatible with the gradual introduction of broad-based systems of social protection, which in turn ensure the social sustainability of the overall situation. Social protection reduces the economic drain of emergency care, expands employment capabilities, facilitates educational opportunities for the children of the poor and helps to break the cycle of dependency. There are many social protection issues that should be dealt with by other organizations and should remain off the radar of IMF, but unless it more consistently promotes the creation of fiscal space for social protection, there is little that other actors can or will do.**

57. **Given the impact of IMF policies, it is indispensable that the internal review currently under way examines ways in which it could actually evaluate the impact of its interventions on the bottom income quintile.**

Beyond modified neoliberalism

58. **If IMF is to respond effectively in the years ahead to the challenges in a world in which both globalization and liberal democracy are increasingly under attack, it will need a different mindset from the modified neoliberalism that currently sets the parameters of its thinking, even as it talks about gender, inequality and social protection. Those concerns will not be truly integrated within its mission unless they are embraced as matters of principle and not just pragmatically-driven sideshows.**

Beyond targeting for its own sake

59. **IMF insists that it does not insist on ever-more-precise targeting of social beneficiaries. That claim is difficult to support given the evidence available to the Special Rapporteur. However, given that the scientific literature now highlights the failures of the proxy means tests used in most such targeting, it is essential that IMF rethink its approach and acknowledge that excessively narrowly targeted social protection ensures that there will be, at best, weak political support for any resulting policies.**

Embracing diversity

60. **Institutions are also the sum of their parts and the elite and highly specialized nature of IMF is reinforced by the composition of its staff. If it is to become less inward-looking, less obsessively self-referential and more genuinely engaged, it needs diversity within.**

61. **First, half of around its 2,400 staff members are economists, almost all of whom have been trained in the subfield of macroeconomics.[125] Between 1980 and 2000, 74 per cent of all senior staff appointees had been educated in the United States of America or the United Kingdom of Great Britain and Northern Ireland, and 40 per**

[125] See www.imf.org/external/about/staff.htm.

cent had been trained at 10 elite universities in those two countries.[126] Much criticism since the Great Recession has focused on the increasing belief of economists from these leading universities that their profession is an almost natural science, based exclusively on mathematical models.[127]

62. **Second, cultural diversity is also limited. As at 2017, among "B-level" staff (from division chiefs to department directors), 5.4 per cent are from sub-Saharan Africa, 4.8 per cent from East Asia and 6 per cent from the Middle East and North Africa.[128]**

63. **Third, only 25.2 per cent of "B-level" economists are women,[129] including 3 of the 32 senior officials,[130] and 3 of 24 Executive Directors, despite a commitment to enhance gender diversity at IMF.[131] While macroeconomics as a whole is a field dominated by men,[132] research suggests that this has significant effects on policy preferences,[133] with female economists favouring Government-backed redistribution policies more than males.[134]**

64. **IMF might be expected to dismiss all of these considerations and insist that it is merely doing the job prescribed for it by its Articles of Agreement. However, issues of staff composition, hiring, incentives and training make a huge difference through their impact on internal culture and dominant thinking.**

Becoming pro-poor

65. **Extreme poverty is abject, violates basic rights and is a political choice. IMF needs to move beyond seeing it as just another abstract item on a balance sheet. At present, the professional mindset of IMF staff sees its role as essentially technical, scientific and apolitical. The imagery often invoked by IMF staff is telling. In critical situations, they see themselves as emergency-room doctors,[135] implying the routine application of prescribed surgical interventions, with no time to consider alternative medical approaches. In surveillance mode, they see themselves as police, also implying that there are rigid rules to be followed. It has been said about IMF economists that "analyses based on numbers, models, and rules seem impartial and fair, they are a defence against accusations of politicized and unprofessional behaviour that can undermine bureaucrats' authority as experts".[136]**

66. **What is missing is an underlying ethical framework. Fiscal consolidation, for example, is not neutral; it can be elite-reinforcing, or it can be pro-poor, or much in-between. The choices that are made reflect values, and the means of fiscal**

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[126] Including at the Massachusetts Institute of Technology or the universities of Chicago, Harvard, Yale, Columbia, Pennsylvania, Princeton, Oxford and Cambridge, and the London School of Economics. See A. Kentikelenis and L. Seabrooke, "The Politics of World Polity: Script-writing in International Organizations", in *American Sociological Review*, vol. 82, iss. 5 (2017), pp. 1065–1092, table 2.

[127] Ha-Joong Chang, *Economics: The User's Guide* (Bloomsbury, 2014); and P. Krugman, "How Did Economists Get it So Wrong?", *The New York Times Magazine* (2 September 2009).

[128] See www.imf.org/external/np/div/2017/index.pdf.

[129] Ibid.

[130] See www.imf.org/external/np/sec/memdir/officers.htm.

[131] See www.imf.org/external/np/sec/memdir/eds.aspx.

[132] J. Wolfers, "Why Women's Voices are Scarce in Economics", *The New York Times* (2 February 2018).

[133] See in general S. Lundberg, "The 2017 Report of the Committee on the Status of Women in the Economics Profession", *American Economic Association*, 6 December 2017; and "Women and economics", *The Economist* (19 December 2017).

[134] A. May, M. McGarvey and R. Whaples, "Are Disagreements among Male and Female Economists Marginal at Best?", *Contemporary Economic Policy* (vol. 32, No. 1, January 2014), pp. 111–132; and May, McGarvey and Kucera, "Gender and European Economic Policy", pp. 162–183.

[135] E. Coburn, "Economics as ideology: challenging expert political power", *State of Power*, (January 2016), p. 57.

[136] M. Barnett and M. Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press, 2004), p. 69.

consolidation should not become ends in themselves. By proclaiming its mission to be pro-poor, the World Bank does not thereby discard economic logic or abandon markets. IMF personnel often use the term "equity", but it has no defined meaning and rarely serves to focus policies on the situation of those living in poverty. They also speak often of "the vulnerable", but this too is an amorphous and open-ended concept that is rarely given fixed policy content.

67. Proactive steps are essential. IMF staff often complained to the Special Rapporteur that social protection only becomes a "hot" issue in times of fiscal crisis, by which time it has become unaffordable. But IMF itself makes all too little effort to raise the issue in the (relatively) good times. A gradual and proactive approach to embedding social protection is required, both by IMF and Governments. The best starting point would be to engage seriously and systematically with the Social Protection Floor Initiative of the United Nations, ILO and WHO.

Costs of replacing politics with technocracy

68. The political economy of promoting social protection, and inequality reduction, cannot be ignored since neither inequality nor social protection is likely to be taken seriously in authoritarian contexts. This raises the issue of democratic governance, which IMF would like to assume is far beyond its remit. And indeed, in the broadest sense, it is. IMF does not exist to promote democracy, but nor does it have a mandate to undermine democratic decision-making. Yet many of its preferred policies promote institutional and budgetary constraints on the workings of democracies. For example, entrenching deficit caps, debt limits and expenditure ceilings all reduce the scope for voters to influence a wide array of fundamental economic and social priorities. At that point, voters are readily tempted by populist political parties with nationalistic, xenophobic and other problematic platforms. Those are issues over which they still have control and which can be used to persuade voters that their preferences still count. A recent IMF paper promoting the virtues of "independent fiscal councils" begins by asserting that "even the best designed democratic systems require institutional constraints on policy discretion to complement democratic controls and prevent undesirable policy outcomes".[137] But the reality will often be that democratic controls are replaced by technocratic fiat. IMF needs to acknowledge the potential negative consequences of such approaches and seek to factor some sort of balancing mechanisms into its recommendations. It is not enough to pretend that policymakers retain a free hand and that the democratic system can always repudiate unpopular policies, when in fact the underlying structures are being reshaped precisely to make this extremely difficult.

Genuine engagement with the outside world

69. IMF frequently pays lip service to the important roles played by "development partners", "external stakeholders", "the World Bank and other institutions", and "country authorities" but, as one interlocutor put it, most observers think it acts as though it is a law unto itself. One IMF country representative, when questioned about interactions with civil society, explained how she made a great effort to persuade them to advocate for IMF priorities, but that seemed to be the limits of any collaboration. IMF should introduce more systematic consultations with a broad range of civil society groups in the context of in-country Article IV reviews, and it should be genuinely open to learning and adjusting its approach. The worldview that emerges from dealing only with the finance ministries of the world is hardly a balanced or adequate one on its own.

70. If IMF is to take social protection seriously, it will need the expertise to do so. It should certainly collaborate in a much more concerted and meaningful way with ILO and UNICEF, among others, but it is unrealistic to assume that it will be able, or

[137] R. Beetsma et al, "Independent Fiscal Councils: Recent Trends and Performance", IMF Working Paper (March 2018), p. 3.

would really wish to, outsource much of its work on the issue to the World Bank unless it has its own in-house expertise to keep a close eye on such collaborative efforts.

71. For its part, the human rights community must also start undertaking serious engagement with, and scrutiny of, the work of IMF. Its work has significant human rights impacts and fiscal consolidation policies can make or break rights.

72. In a world that is now suffering the consequences of the past lopsided approach of IMF to globalization and its single-minded pursuit of a model of fiscal consolidation that relegated social impact to an afterthought, IMF not only bears responsibility for the past but will also determine whether the future will be different. To date, IMF has been an organization with a large brain, an unhealthy ego and a tiny conscience. If it takes social protection on board seriously, rather than making a tokenistic commitment to minimal safety nets, it can show that it has actually learned from its past mistakes.

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Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on his mission to the United States of America from 1 to 15 December 2017. The purpose of the visit was to evaluate, and report to the Human Rights Council on, the extent to which the Government's policies and programmes aimed at addressing extreme poverty are consistent with its human rights obligations and to offer constructive recommendations to the Government and other stakeholders.

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Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. The Special Rapporteur on extreme poverty and human rights visited the United States of America from 1 to 15 December 2017, in accordance with Human Rights Council resolution 35/19. The purpose of the visit was to report to the Council on the extent to which the Government's policies and programmes relating to extreme poverty are consistent with its human rights obligations and to offer constructive recommendations to the Government and other stakeholders. The Special Rapporteur is grateful to the Government for inviting him, for facilitating his visit and for continuing its cooperation with the Council's accountability mechanisms that apply to all States.[1]

2. During his visit, the Special Rapporteur met with government officials at the federal, state, county and city levels, members of Congress, representatives of civil society, academics and people living in poverty. He also received more than 40 detailed written submissions in advance of his visit.[2] He visited California (Los Angeles and San Francisco), Alabama (Lowndes County and Montgomery), Georgia (Atlanta), Puerto Rico (San Juan, Guayama and Salinas), West Virginia (Charleston) and Washington, D.C. He is deeply grateful to all those who organized community consultations for him in these locations, and to the US Human Rights Network, which devoted a full day of its 2017 national convening in Atlanta to his country visit.

3. The strict word limit for this report makes it impossible to delve deeply into even the key issues. Fortunately, there is already much excellent scholarship and many civil society analyses of the challenges of poverty in the United States.[3] In the present report, the Special Rapporteur aims to bring together some of those analyses, identify the key poverty-related problems and explain the relevance of the international human rights obligations of the United States in this context. As with all such country visits, the consideration of the report by the Human Rights Council will enable other States to examine the extent to which the United States is living up to its international obligations.

II. Overview

4. The United States is a land of stark contrasts. It is one of the world's wealthiest societies, a global leader in many areas, and a land of unsurpassed technological and other forms of innovation. Its corporations are global trendsetters, its civil society is vibrant and sophisticated and its higher education system leads the world. But its immense wealth and expertise stand in shocking contrast with the conditions in which vast numbers of its citizens live. About 40 million live in poverty, 18.5 million in extreme poverty, and 5.3 million live in Third World conditions of absolute poverty.[4] It has the highest youth poverty rate in the Organization for Economic Cooperation and Development (OECD), and the highest infant mortality rates among comparable OECD States. Its citizens live shorter and sicker lives compared to those living in all other rich democracies, eradicable tropical diseases are increasingly prevalent, and it has the world's highest incarceration rate, one of

[1] The Special Rapporteur is grateful for the superb research and analysis undertaken by Christiaan van Veen, Anna Bulman, Ria Singh Sawhney and staff of the United Nations Office of the High Commissioner for Human Rights.

[2] Submissions available at www.ohchr.org/EN/Issues/Poverty/Pages/Callforinput.aspx.

[3] See, for example: Kathryn J. Edin and H. Luke Shaefer, *$2.00 a Day: Living on Almost Nothing in America* (New York, Mariner Books, 2016); Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York, Crown Publishers, 2016); Sasha Abramsky, *The American Way of Poverty: How the Other Half Still Lives* (New York, Nation Books, 2013); and Peter Edelman, *Not a Crime to Be Poor: The Criminalization of Poverty in America* (The New Press, New York, 2017).

[4] Jessica L. Semega, Kayla R. Fontenot and Melissa A. Kollar, *Income and Poverty in the United States: 2016 – Current Population Reports* (United States Census Bureau, September 2017), pp. 12 and 17. Available at www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf. See also Angus Deaton, "The U.S. can no longer hide from its deep poverty problem", *New York Times*, 24 January 2018.

the lowest levels of voter registrations in among OECD countries and the highest obesity levels in the developed world.

5. The United States has the highest rate of income inequality among Western countries.[5] The $1.5 trillion in tax cuts in December 2017 overwhelmingly benefited the wealthy and worsened inequality. The consequences of neglecting poverty and promoting inequality are clear. The United States has one of the highest poverty and inequality levels among the OECD countries, and the Stanford Center on Inequality and Poverty ranks it 18th out of 21 wealthy countries in terms of labour markets, poverty rates, safety nets, wealth inequality and economic mobility. But in 2018 the United States had over 25 per cent of the world's 2,208 billionaires.[6] There is thus a dramatic contrast between the immense wealth of the few and the squalor and deprivation in which vast numbers of Americans exist. For almost five decades the overall policy response has been neglectful at best, but the policies pursued over the past year seem deliberately designed to remove basic protections from the poorest, punish those who are not in employment and make even basic health care into a privilege to be earned rather than a right of citizenship.

6. The visit of the Special Rapporteur coincided with the dramatic change of direction in relevant United States policies. The new policies: (a) provide unprecedentedly high tax breaks and financial windfalls to the very wealthy and the largest corporations; (b) pay for these partly by reducing welfare benefits for the poor; (c) undertake a radical programme of financial, environmental, health and safety deregulation that eliminates protections mainly benefiting the middle classes and the poor; (d) seek to add over 20 million poor and middle class persons to the ranks of those without health insurance; (e) restrict eligibility for many welfare benefits while increasing the obstacles required to be overcome by those eligible; (f) dramatically increase spending on defence, while rejecting requested improvements in key veterans' benefits; (g) do not provide adequate additional funding to address an opioid crisis that is decimating parts of the country; and (h) make no effort to tackle the structural racism that keeps a large percentage of non-Whites[7] in poverty and near poverty.

7. In a 2017 report, the International Monetary Fund (IMF) captured the situation even before the impact of these aggressively regressive redistributive policies had been felt, stating that the United States economy "is delivering better living standards for only the few", and that "household incomes are stagnating for a large share of the population, job opportunities are deteriorating, prospects for upward mobility are waning, and economic gains are increasingly accruing to those that are already wealthy".[8]

8. The share of the top 1 per cent of the population in the United States has grown steadily in recent years. In 2016 they owned 38.6 per cent of total wealth. In relation to both wealth and income the share of the bottom 90 per cent has fallen in most of the past 25 years.[9] The tax reform will worsen this situation and ensure that the United States remains the most unequal society in the developed world. The planned dramatic cuts in welfare will essentially shred crucial dimensions of a safety net that is already full of holes. Since economic and political power reinforce one another, the political system will be even more vulnerable to capture by wealthy elites.

9. This situation bodes ill not only for the poor and middle class in America, but for society as a whole, with high poverty levels "creating disparities in the education system, hampering human capital formation and eating into future productivity".[10] There are also

[5] World Income Inequality Database, available at www.wider.unu.edu/project/wiid-world-income-inequality-database.

[6] See www.forbes.com/sites/forbespr/2018/03/06/forbes-32nd-annual-worlds-billionaires-issue/#43e9e95a10e0.

[7] In the present report, references to race or ethnicity include the following classifications used by the United States Census Bureau: American Indian or Alaska Native, Asian, Black and White (see www.census.gov/topics/population/race/about.html).

[8] IMF, "United States: staff report for the 2017 Article IV Consultation", para. 14.

[9] Jesse Bricker and others, "Changes in U.S. family finances from 2013 to 2016: evidence from the Survey of Consumer Finances", *Federal Reserve Bulletin* (September 2017), vol. 103, No. 3, p. 10.

[10] IMF, "United States: staff report", para. 18.

global consequences. The tax cuts will fuel a global race to the bottom, thus further reducing the revenues needed by Governments to ensure basic social protection and meet their human rights obligations. And the United States remains a model whose policies other countries seek to emulate.

10. Defenders of the status quo point to the United States as the land of opportunity and the place where the American dream can come true because the poorest can aspire to the ranks of the richest. But today's reality is very different. The United States now has one of the lowest rates of intergenerational social mobility of any of the rich countries.[11] Zip codes, which are usually reliable proxies for race and wealth, are tragically reliable predictors of a child's future employment and income prospects. High child and youth poverty rates perpetuate the intergenerational transmission of poverty very effectively, and ensure that the American dream is rapidly becoming the American illusion. The equality of opportunity, which is so prized in theory, is in practice a myth, especially for minorities and women, but also for many middle-class White workers.

11. New technologies now play a central role in either exacerbating or reducing poverty levels in the United States. Some commentators are singularly optimistic in this regard and highlight the many potential benefits of new technologies, including those based on artificial intelligence, for poverty reduction efforts in fields as diverse as health care, transportation, the environment, criminal justice, and economic inclusion.[12] Others acknowledge the downsides, and especially the potential negative effects of automation and robotization on future employment levels and job security.[13] But remarkably little attention has been given to the specific impact of these new technologies on the lives of the poor in American society today.[14] Such inquiries have significance well beyond that pertaining to the poor, since experience shows that those in poverty are often a testing ground for practices and policies subsequently applied more broadly. In the present report, the Special Rapporteur seeks to stimulate deeper reflection on the impact of new technologies on the human rights of the poorest.

III. Human rights dimension

12. Successive administrations, including the current one, have determinedly rejected the idea that economic and social rights are full-fledged human rights, despite their clear recognition not only in key treaties that the United States has ratified, such as the Convention on the Elimination of All Forms of Racial Discrimination, but also in the Universal Declaration of Human Rights, which the United States has long insisted other countries must respect. But denial does not eliminate responsibility, nor does it negate obligations. International human rights law recognizes a right to education, a right to health care, a right to social protection for those in need and a right to an adequate standard of living. In practice, the United States is alone among developed countries in insisting that, while human rights are of fundamental importance, they do not include rights that guard against dying of hunger, dying from a lack of access to affordable health care or growing up in a context of total deprivation. Since the United States has refused to accord domestic recognition to the economic and social rights agreed by most other States in the

[11] Raj Chetty and others, "The fading American dream: trends in absolute income mobility since 1940", National Bureau of Economic Research Working Paper 22910 (December 2016), p. 2. See also Jonathan Davis and Bhashkar Mazumder, "The decline in intergenerational mobility after 1980", Opportunity & Inclusive Growth Institute working paper (29 March 2017), available at www.minneapolisfed.org/institute/working-papers/17-21.pdf.

[12] Executive Office of the President, National Science and Technology Council Committee on Technology, "Preparing for the future of artificial intelligence" (October 2016), p. 1. See also Elisabeth A. Mason, "A.I. and big data could power a new war on poverty", *New York Times*, 1 January 2018.

[13] Charles Varner, Marybeth Mattingly and David Grusky, "The facts behind the visions", *Pathways* (Spring 2017), p. 4.

[14] Cathy O'Neil, "The ivory tower can't keep ignoring tech", *New York Times*, 14 November 2017.

International Covenant on Economic, Social and Cultural Rights and other treaties,[15] except for the recognition of some social rights, and especially the right to education, in state constitutions, the primary focus of the present report is on those civil and political rights reflected in the United States Bill of Rights and in the International Covenant on Civil and Political Rights, which the United States has ratified.

IV. Who are "the poor"?

13. In thinking about poverty, it is striking how much weight is given to caricatured narratives about the purported innate differences between rich and poor that are consistently peddled by some politicians and media. The rich are industrious, entrepreneurial, patriotic and the drivers of economic success. The poor are wasters, losers and scammers. As a result, money spent on welfare is money down the drain. If the poor really want to make it in the United States, they can easily do so: they really can achieve the American dream if only they work hard enough. The reality, however, is very different. Many of the wealthiest citizens do not pay taxes at the rates that others do, hoard much of their wealth offshore and often make their profits purely from speculation rather than contributing to the overall wealth of the American community.

14. In imagining the poor, racist stereotypes are usually not far beneath the surface. The poor are overwhelmingly assumed to be people of colour, whether African Americans or Hispanic "immigrants". The reality is that there are 8 million more poor Whites than there are poor Blacks.[16] The face of poverty in America is not only Black or Hispanic, but also White, Asian and many other backgrounds.

15. Similarly, large numbers of welfare recipients are assumed to be living high on "the dole". Some politicians and political appointees with whom the Special Rapporteur spoke were completely sold on the narrative of such scammers sitting on comfortable sofas, watching cable television or spending their days on their smartphones, all paid for by welfare. The Special Rapporteur wonders how many of those politicians have ever visited poor areas, let alone spoken to those who dwell there. There are anecdotes aplenty, but little evidence. In every society, there are those who abuse the system, as much in the upper income levels as in the lower. But in reality, the poor are overwhelmingly those born into poverty, or those thrust there by circumstances largely beyond their control, such as physical or mental disabilities, divorce, family breakdown, illness, old age, unliveable wages or discrimination in the job market.

V. Current extent of poverty in the United States of America

16. There is considerable debate over the extent of poverty in the United States, but the present report relies principally upon official government statistics, especially from the United States Census Bureau. It defines and quantifies poverty in America based on "poverty thresholds" or official poverty measures, updated each year. These thresholds have been used since President Lyndon B. Johnson's war on poverty in the 1960s and use a set of dollar value thresholds that vary by family size and composition to determine who is in poverty.[17] Following much criticism of the official poverty measures, the Census Bureau developed a supplemental poverty measure, which is preferred by many experts.[18] According to the official poverty measures, in 2016, 12.7 per cent of Americans were living in poverty;[19] according to the supplemental poverty measure, the figure was 14 per cent.[20]

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[15] The United States is the only country in the world that has not ratified the Convention on the Rights of the Child, which protects the economic and social rights of children.

[16] Semega, Fontenot and Kollar, *Income and Poverty*, p. 12.

[17] Ibid., p. 43.

[18] Written submission by the Georgetown Center on Poverty and Inequality, 4 October 2017, p. 2.

[19] Semega, Fontenot and Kollar, *Income and Poverty*, p. 12.

[20] Liana Fox, "The supplemental poverty measure" (September 2017), p. 1. Available at www.census.gov/content/dam/Census/library/publications/2017/demo/p60-261.pdf.

VI. Problems with existing governmental policies

17. There is no magic recipe for eliminating extreme poverty, and each level of government must make its own good-faith decisions. At the end of the day, however, particularly in a rich country like the United States, the persistence of extreme poverty is a political choice made by those in power. With political will, it could readily be eliminated. What is known, from long experience and in the light of the Government's human rights obligations, is that there are indispensable ingredients for a set of policies designed to eliminate poverty. They include: democratic decision-making, full employment policies, social protection for the vulnerable, a fair and effective justice system, gender and racial equality, respect for human dignity, responsible fiscal policies and environmental justice. As shown below, the United States falls well short on each of these measures.

A. Undermining of democracy

18. The cornerstone of American society is democracy, but it is being steadily undermined, and with it the human right to political participation protected in article 25 of the International Covenant on Civil and Political Rights. The principle of one person, one vote applies in theory, but is increasingly far from the reality.

19. In a democracy, the task of government should be to facilitate political participation by ensuring that all citizens can vote and that their votes will count equally. However, in the United States there is overt disenfranchisement of more than 6 million felons and ex-felons,[21] which predominantly affects Black citizens since they are the ones whose conduct is often specifically targeted for criminalization. In addition, nine states currently condition the restoration of the right to vote after prison on the payment of outstanding fines and fees. A typical outcome is that seen in Alabama, where a majority of all ex-felons cannot vote.[22]

20. Then there is covert disenfranchisement, which includes the dramatic gerrymandering of electoral districts to privilege particular groups of voters, the imposition of artificial and unnecessary voter identification requirements, the blatant manipulation of polling station locations, the relocation of Departments of Motor Vehicles' offices to make it more difficult for certain groups to obtain identification, and the general ramping up of obstacles to voting, especially for those without resources. The net result is that people living in poverty, minorities and other disfavoured groups are being systematically deprived of their right to vote.

21. It is thus unsurprising that the United States has one of the lowest turnout rates in elections among developed countries, with only 55.7 per cent of the voting-age population casting ballots in the 2016 presidential election.[23] Registered voters represent a much smaller share of potential voters in the United States than in just about any other OECD country. Only about 64 per cent of the United States voting-age population was registered in 2016, compared with 91 per cent in Canada and the United Kingdom of Great Britain and Northern Ireland, 96 per cent in Sweden and nearly 99 per cent in Japan. Low turnouts are also explained by the perception that election outcomes will have no impact on the lives of poor people. One politician remarked to the Special Rapporteur on how few campaign appearances most politicians bother to make in overwhelmingly poor districts, which reflects the broader absence of party representation for low-income and working-class voters.[24]

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[21] The Sentencing Project, "6 million lost voters: state-level estimates of felony disenfranchisement, 2016".

[22] Marc Meredith and Michael Morse, "Discretionary disenfranchisement: the case of legal financial obligations" (January 2017). Available at www.sas.upenn.edu/~marcmere/workingpapers/DiscretionaryLFOs.pdf.

[23] Pew Research Center, "U.S. trails most developed countries in voter turnout" (15 May 2017).

[24] See also Karen Long Jusko, *Who Speaks for the Poor? Electoral Geography, Party Entry, and Representation* (Cambridge University Press, 2017).

22. The link between poverty and the absence of political rights is perfectly illustrated by Puerto Rico. If it were a state, it would be the poorest in the Union. But it is not a state, it is a mere "territory". Puerto Ricans who live on the island have no representative with full voting rights in Congress and cannot vote in presidential elections, although they can vote in Presidential primaries. In a country that likes to see itself as the oldest democracy in the world and a staunch defender of political rights on the international stage, more than 3 million people who live on the island have no real power in their own capital.

23. Puerto Rico has a fiscal deficit and a political rights deficit, and the two are not easily disentangled. The Special Rapporteur met with the Executive Director of the Financial Oversight and Management Board that was imposed by Congress in 2016 on Puerto Rico as part of the Puerto Rico Oversight, Management, and Economic Stability Act. There is little indication that social protection concerns feature in a meaningful way in the Board's analyses. At a time when even the IMF is insisting that social protection should be explicitly factored into prescriptions for fiscal adjustment (i.e., austerity), the Board should take account of human rights and social protection concerns as it contemplates far-reaching decisions on welfare reform, minimum wage and labour market deregulation.

24. It is not for the Special Rapporteur to suggest any resolution to the hotly contested issue of the constitutional status of Puerto Rico. Many interlocutors, however, made clear the widespread feeling that Puerto Ricans consider their territory to be colonized and that the United States Congress is happy to leave them in a limbo in which they have neither meaningful Congressional representation nor the ability to govern themselves. In the light of recent Supreme Court jurisprudence and Congress's adoption of the Puerto Rico Oversight, Management, and Economic Stability Act there seems to be good reason for the Special Political and Decolonization Committee of the United Nations to conclude that the island is no longer a self-governing territory.

B. Shortcomings in basic social protection

25. It is sometimes argued that President Johnson's war on poverty has failed miserably because, despite the "trillions of taxpayer dollars" spent on welfare programmes over the past five decades, the official poverty rate has remained largely unchanged.[25] The proposed solution then is to downsize the safety net by making it more "efficient", "targeted" and "evidence-based", while underlining the need to move "from welfare to work".[26]

26. These ideas underpin both Speaker Paul Ryan's blueprint for welfare reform[27] and the budget proposed by President Donald Trump for the fiscal year 2019, which decries "stubbornly high" enrolment in welfare programmes, and describes millions of Americans as being "in a tragic state of dependency on a welfare system that does not reward work, and in many cases, pays people not to work".[28]

27. The available evidence, however, points in a very different direction. A 2014 White House report concluded that the war on poverty had been highly successful.[29] Based on the supplemental poverty measure, poverty rates in the United States fell from 26 per cent in 1967 to 16 per cent in 2012 — a decline of nearly 40 per cent.[30] The Census Bureau calculates that programmes such as Social Security, refundable tax credits (earned income tax credit), the Supplemental Nutrition Assistance Program, the Supplemental Security

[25] See, for example, Task Force on Poverty, Opportunity, and Upward Mobility, *A Better Way: Our Vision for a Confident America* (June, 2016).

[26] Ibid.

[27] David Morgan, "Speaker Ryan pledges to work with Trump on bold agenda", *Reuters*, 9 November 2016.

[28] Office of Management and Budget, *Efficient, Effective, Accountable: An American Budget* (2018), p. 3.

[29] Council of Economic Advisors, *The War on Poverty 50 Years Later: A Progress Report* (2014), p. 45.

[30] Christopher T. Wimer and others, "Trends in poverty with an anchored supplemental poverty measure", Colombia Population Research Center working paper (2013).

Income programme and housing subsidies collectively prevented about 44 million Americans from falling into poverty in 2016.[31]

28. The following sections address shortcomings in both the existing social protection system for the poorest Americans and in the assumptions underlying the administration's policy responses.

An illusory emphasis on employment

29. Proposals to slash the meagre welfare arrangements that currently exist are now sought to be justified primarily on the basis that the poor need to leave welfare and go to work. The assumption, especially in a thriving economy, is that there are a great many jobs out there waiting to be filled by individuals with low educational qualifications, often with disabilities of one kind or another, sometimes burdened with a criminal record (often poverty related), without meaningful access to health care, and with no training or effective assistance to obtain employment. It also assumes that the jobs they could get will make them independent of state assistance.

30. In reality, the job market for such people is extraordinarily limited, and even more so for those without basic forms of social protection and support. The case of Walmart, the largest employer in the United States, is instructive. Many of its workers cannot survive on a full-time wage in the absence of food stamps. This fits in a broader trend: the share of households that, while having earnings, also receive nutrition assistance rose from 19.6 per cent in 1989 to 31.8 per cent in 2015.[32] Up to $6 billion annually goes from the Supplemental Nutrition Assistance Program and other public assistance programmes to support workers in firms like Walmart, providing a huge indirect subsidy to the relevant corporations.[33] Walmart lobbied heavily for tax reform,[34] from which it will save billions, and then announced it would spend an additional $700 million in increasing employee wages and benefits for its workers.[35] But the resulting rise in the debt of the United States, due in part to the tax reform,[36] has then been used to justify a proposed 30 per cent cut in Supplemental Nutrition Assistance Program funding over a decade.[37]

31. In terms of job availability, the reality is very different from that portrayed by the welfare-to-work proponents. Despite the strong economy, there has been a long-term decline in employment rates; by 2017, only 89 per cent of males aged 25 to 54 were employed.[38] While "supply" factors such as growing rates of disability, increasing geographic immobility and higher incarceration rates are relevant, a 2016 White House report concluded that reductions in labour supply were far less important than reductions in labour demand in accounting for the long-run trend.[39] In the future, new technologies, such as self-driving cars, 3D printers and robot-staffed factories and warehouses, may lead to a continuing decline in demand for low-skilled labour. Leading poverty experts have concluded that, because of this rising joblessness, the poverty population in the United States "is becoming a more deprived and destitute class, one that's disconnected from the economy and unable to meet basic needs".[40]

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[31] Fox, "The Supplemental Poverty Measure", p. 10.

[32] See www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=82672.

[33] Clare O'Connor, "Report: Walmart workers cost taxpayers $6.2 billion in public assistance", *Forbes*, 15 April 2014.

[34] Center for Responsive Politics, reporting on lobbying activity on tax issues in 2017. Available at www.opensecrets.org/lobby/issuesum.php?id=TAX&year=2017.

[35] Michael Corkery, "Walmart's bumpy day: from wage increase to store closings", *New York Times*, 11 January 2018.

[36] "Growing the deficit: the Senate passes a tax bill", *Economist*, 2 December 2017.

[37] Julie Hirschfeld Davis, "White House proposes $4.4 trillion budget that adds $7 trillion to deficits," *New York Times*, 12 February 2018.

[38] Varner, Mattingly and Grusky, "The facts", p. 4.

[39] Council of Economic Advisers, "The long-term decline in prime-age male labor force participation" (2016).

[40] Varner, Mattingly and Grusky, "The facts", p. 4.

32. Earlier experiments with welfare reform, particularly the Clinton-era replacement of Aid to Families with Dependent Children with the Temporary Assistance for Needy Families programme, should caution present-day proponents of "welfare to work". The impact of the 1996 welfare reform on poor, single mothers has been especially dramatic. Many took low-wage jobs after the reform and "the increase in their earnings was often cancelled out by their loss of welfare benefits, leaving their overall income relatively unchanged".[41] The situation of single mothers who could not find work deteriorated.[42] As a result, there was a 748 (!) per cent increase in the number of children of single-mother families experiencing annual $2-a-day poverty between 1995 and 2012.[43]

Use of fraud as a smokescreen

33. Calls for welfare reform take place against a constant drumbeat of allegations of widespread fraud in the system. Government officials warned the Special Rapporteur that individuals are constantly coming up with new schemes to live high on the welfare hog, and that individual states are gaming the welfare system to cheat the federal Government. The contrast with tax reform is instructive. In the tax context, immense faith is placed in the goodwill and altruism of the corporate beneficiaries, while with welfare reform the opposite assumptions apply. The reality, of course, is that there are good and bad corporate actors and there are good and bad welfare claimants. But while funding for the Internal Revenue Service to audit wealthy taxpayers has been reduced, efforts to identify welfare fraud are being greatly intensified.[44] Revelations of widespread tax avoidance by companies and high-wealth individuals draw no rebuke, only acquiescence and the maintenance of the loopholes and other arrangements designed to facilitate such arrangements. But revelations of food stamps being used for purposes other than staying alive draw howls of outrage from government officials and their media supporters.

34. Yet, despite repeated requests to officials for statistics on welfare fraud, the Special Rapporteur has received little convincing evidence. The Government collects data on "improper payments" made by federal departments and agencies, but this is a much broader concept than fraud. A 2016 Government Accountability Office report showed an error rate in 2015 of 3.66 per cent for the Supplemental Nutrition Assistance Program and 4.01 per cent for public housing and rental assistance. By contrast, the error rate for travel pay by the Department of Defense was 8 per cent.[45]

35. The percentage of Supplemental Nutrition Assistance Program benefit dollars issued to ineligible households or to eligible households in excessive amounts was as low as 2.96 per cent in 2014.[46] According to the Center on Budget and Policy Priorities, the overwhelming majority of those errors result from mistakes by different parties, rather than from dishonesty or fraud by recipients.[47] Almost 60 per cent of the dollar value of overpayments by states resulted from mistakes by the government, rather than recipients.[48] In 2015, 55 per cent of 723,111 investigations found no fraud.[49]

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[41] Robert A. Moffitt and Stephanie Garlow, "Did welfare reform increase employment and reduce poverty?" *Pathways* (Winter, 2018), p. 19.

[42] Ibid.

[43] H. Luke Shaefer and Kathryn Edin, "Welfare reform and the families it left behind", *Pathways* (Winter, 2018), p. 24.

[44] Arthur Delaney, "Rich fraud, poor fraud: the GOP's double standard on tax mistakes", *Huffington Post*, 14 December 2017.

[45] United States Government Accountability Office, report to Congressional committees on improper payments (June 2016), appendix III.

[46] See https://fns-prod.azureedge.net/sites/default/files/snap/2014-rates.pdf. See also Center on Budget and Policy Priorities, "SNAP: combating fraud and improving program integrity without weakening success", 9 June 2016, p. 10. Available at www.cbpp.org/sites/default/files/atoms/files/6-9-16fa-testimony.pdf.

[47] Center on Budget and Policy Priorities, "SNAP: combating fraud", p. 11.

[48] Ibid.

[49] See https://fns-prod.azureedge.net/sites/default/files/snap/2015-State-Activity-Report.pdf.

36. Fraud rhetoric is commonly used against persons with disabilities, large numbers of whom allegedly receive disability allowances when they could actually be working full time. When the Special Rapporteur probed into the reasons for the very high rates of persons with disabilities in West Virginia receiving benefits, government officials explained that most recipients had attained low levels of education, worked in demanding manual labour jobs and were often exposed to risks that employers were not required to guard against.

Social protection for children

37. Appropriate cognitive and socio-emotional stimulation, adequate nutrition and health care, and stable and secure environments early in life are all essential ingredients in maximizing children's potential and achieving optimal life outcomes. Empirical evidence suggests strong correlations between early childhood poverty and adverse life outcomes, particularly those related to achievement skills and cognitive development.

38. From this perspective, the shockingly high number of children living in poverty in the United States demands urgent attention. In 2016, 18 per cent of children (13.3 million) were living in poverty, and children comprised 32.6 per cent of all people in poverty.[50] About 20 per cent of children live in relative income poverty, compared to the OECD average of 13 per cent.[51] Contrary to stereotypical assumptions, 31 per cent of poor children are White, 24 per cent are Black, 36 per cent are Hispanic and 1 per cent are indigenous.[52] This is consistent with the fact that the United States ranks 25th out of 29 industrialized nations in investing in early childhood education.[53]

39. Poor children are also significantly affected by the country's crises regarding affordable and adequate housing. On a given night in 2017, about 21 per cent (or 114,829) of homeless individuals were children.[54] But this official figure may be a severe underestimate, since homeless children temporarily staying with friends, family or in motels are excluded from the point-in-time count.[55] According to the Department of Education, the number of homeless students identified as experiencing homelessness at some point during the 2015/16 school year was 1,304,803.[56]

40. The infant mortality rate, at 5.8 deaths per 1,000 live births, is almost 50 per cent higher than the OECD average of 3.9.[57] On a positive note, the United States has increased health insurance coverage for children through the expansion of Medicaid and the Children's Health Insurance Program, bringing child health insurance rates to a historic high of 95 per cent.[58] These achievements are, however, under threat, as discussed below.

41. In addition, the Supplemental Nutrition Assistance Program kept 3.8 million children out of poverty in 2015,[59] and in 2016, the earned income tax credit and the child tax credit lifted a further 4.7 million children out of poverty.[60] By contrast, the reach and

[50] Semega, Fontenot and Kollar, *Income and Poverty*, p. 14.

[51] OECD, "How does United States compare on child well-being?" (November 2017).

[52] Heather Koball and Yang Jiang, "Basic facts about low-income children: children under 18 years, 2016" (National Center for Children in Poverty, January 2018).

[53] Robert Wood Johnston Foundation, "Can early childhood interventions improve health and well-being?" (March 2016).

[54] United States, Department of Housing and Urban Development, *The 2017 Annual Homeless Assessment Report (AHAR) to Congress, Part 1: Point-in-time estimates of Homelessness*, p. 8.

[55] Madeline Daniels, "Housing Department's count of homeless children and youth problematic", 19 November 2015. Available from https://campaignforchildren.org/news/press-release/housing-departth-problematic/.

[56] National Center for Homeless Education, *Federal Data Summary: School Years 2013–14 to 2015–16*, p. iii.

[57] OECD, "How does United States compare".

[58] Joan Alker and Alisa Chester, "Children's health coverage rate now at historic high of 95 percent" (Georgetown University Health Policy Institute, October 2016).

[59] Center on Budget and Policy Priorities, "Policy basics: the Supplemental Nutrition Assistance Program (SNAP)" (February 2018).

[60] Center on Budget and Policy Priorities, "Policy basics: the child tax credit" (October 2017).

impact of the Temporary Assistance for Needy Families programme has been very limited. In 2016, only 23 per cent of families in poverty received cash assistance from that programme, and the figure is less than 10 per cent in a growing number of states.[61]

Adult dental care

42. The Affordable Care Act greatly expanded the availability of dental care to children, but not for adults. Some 49 million Americans live in federally designated "dental professional shortage areas" and Medicare (the programme for the aged and those with disabilities) does not cover routine dental care.[62] The only access to dental care for the uninsured is through the emergency room, where excruciating pain can lead to an extraction. Even for those with coverage, access is not guaranteed, as only a minority of dentists see Medicaid patients.[63] Poor oral hygiene and disfiguring dental profiles lead to unemployability in many jobs, being shunned in the community and being left unable to function effectively. Yet there is no universal programme to address those issues, which fundamentally affect the human dignity and ultimately the civil rights of the persons concerned.

C. Reliance on criminalization to conceal the underlying poverty problem

Criminalization of the homeless

43. The official point-in-time estimates of homelessness in 2017 show a nationwide figure of 553,742, including 76,501 in New York, 55,188 in Los Angeles and 6,858 in San Francisco.[64] There is ample evidence that these figures significantly underestimate the actual scale of the problem.

44. In many cities, homeless persons are effectively criminalized for the situation in which they find themselves. Sleeping rough, sitting in public places, panhandling, public urination and myriad other offences have been devised to attack the "blight" of homelessness. The criminalization of homeless individuals in cities that provide almost zero public toilets seems particularly callous. In June 2017, it was reported that the approximately 1,800 homeless individuals on Skid Row in Los Angeles had access to only nine public toilets.[65] Los Angeles failed to meet even the minimum standards the United Nations High Commissioner for Refugees sets for refugee camps in the Syrian Arab Republic and other emergency situations.[66]

45. Ever more demanding and intrusive regulations lead to infraction notices for the homeless, which rapidly turn into misdemeanours, leading to warrants, incarceration, unpayable fines and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing. Yet the authorities in cities such as Los Angeles and San Francisco often encourage this vicious circle. On Skid Row in Los Angeles, 14,000 homeless persons were arrested in 2016 alone, an increase of 31 per cent over 2011, while overall arrests in the city decreased by 15 per cent.[67] Citizens and local authorities, rather than treating homeless persons as affronts to their sensibilities and neighbourhoods, should see in their presence a tragic indictment of community and government policies. Homelessness on this scale is far from inevitable and reflects political choices to see the solution as law enforcement rather than adequate and accessible low-cost

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[61] Center on Budget and Policy Priorities, "TANF reaching few poor families" (December 2017).

[62] Mary Otto, *Teeth: The Story of Beauty, Inequality, and the Struggle for Oral Health in America* (New York, The New Press, 2017), p. vii.

[63] Ibid., pp. 37, 120 and 171.

[64] United States, Department of Housing and Urban Development, *The 2017 Annual Homeless Assessment Report*.

[65] Alastair Gee, "At night on Skid Row, nearly 2,000 homeless people share just nine toilets", *The Guardian*, 30 June 2017.

[66] See https://emergency.unhcr.org/entry/33015/emergency-sanitation-standard.

[67] Gale Holland and Christine Zhang, "Huge increase in arrests of homeless in L.A. – but mostly for minor offenses", *Los Angeles Times*, 4 February 2018.

housing, medical treatment, psychological counselling and job training.[68] The Right to Rest Act introduced in California, Colorado and Oregon is an example of the type of legislative approach needed to shift from the criminal justice response to a human rights-centred response to homelessness.

46. As the Special Rapporteur explained in more detail in his 15 December 2017 statement,[69] coordinated entry systems to match housing supply for the homeless to demand have been introduced in Los Angeles, San Francisco and elsewhere. These are premised partly on the idea that homelessness is a data problem and that new information technologies are key to solving it.[70] But despite the good intentions behind them, including the reduction of duplication and fragmentation in service delivery, coordinated entry systems simply replicate many problems associated with existing policy responses. They contribute to the process of criminalization by requiring the homeless to take part in an intrusive survey that makes many feel they "are giving up their human right to privacy in return for their human right to housing".[71] Many participants fear that police forces have access to data collected from the homeless; it could be concluded from conversations between the Special Rapporteur and officials and experts that this fear may well be justified. The introduction of coordinated entry systems has also been criticized for being costly and diverting resources and attention away from the key problem, which is the lack of available housing for those in need.[72] New information technology-based solutions, such as coordinated entry systems, might bring improved reliability and objectivity, but the vulnerability scores they produce have been challenged for their randomness.[73]

Treatment of the poor in the criminal justice system

47. In many cities and counties, the criminal justice system is effectively a system for keeping the poor in poverty while generating revenue to fund not only the justice system but many other programmes. The use of the legal system to raise revenue, not to promote justice, as was documented so powerfully in a 2015 report on Ferguson, Missouri by the Department of Justice,[74] is pervasive around the country.

48. So-called fines and fees are piled up so that low level infractions become immensely burdensome, a process that affects only the poorest members of society, who pay the vast majority of such penalties. Driving licences are also commonly suspended for a wide range of non-driving related offences, such as a failure to pay fines.[75] This is a perfect way to ensure that the poor, living in communities that have steadfastly refused to invest in serious public transport systems, are unable to earn a living that might have helped to pay the outstanding debt. Two paths are open: penury, or driving illegally, thus risking even more serious and counterproductive criminalization.

49. Another practice that affects the poor almost exclusively is that of setting large bail bonds for a defendant who seeks to go free pending trial. Some 11 million people are admitted to local jails annually, and on any given day more than 730,000 people are being held, of whom almost two thirds are awaiting trial, and thus presumed to be innocent. Yet judges have increasingly set large bail amounts, which means that wealthy defendants can

[68] See, for example, Gary Blasi and Phillip Mangano, "Stop punishing and start helping L.A.'s homeless", *Los Angeles Times*, 30 June 2015.

[69] See paras. 54–61. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533&LangID=E.

[70] See, for example, City of Los Angeles, Comprehensive Homeless Strategy (2016), p. 49.

[71] Statement made during a civil society consultation, San Francisco, 6 December 2017.

[72] A recent publication estimated that in Los Angeles alone the coordinated entry system had cost about $11 million since its introduction, including only the cost of technical resources, software and extra personnel, not the cost of providing actual housing or services. (Virginia Eubanks, *Automating Inequality* (New York, St. Martin's Press, 2018), p. 113.

[73] Ibid., chap. 3.

[74] See www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[75] See, for example, Lawyers' Committee for Civil Rights of the San Francisco Bay Area and others, "Not just a Ferguson problem: how traffic courts drive inequality in California" (2015).

secure their freedom while poor defendants are likely to stay in jail, with severe consequences such as loss of jobs, disruption of childcare, inability to pay rent and deeper destitution.

50. A major movement to eliminate bail bonds is gathering steam across the United States, and needs to be embraced by anyone concerned about the utterly disproportionate negative impact of the justice system upon the poor. The purpose of the reform is to link pretrial detention to risk rather than wealth. A growing number of jurisdictions are adopting risk assessment tools to assist in pretrial release and custody decisions. This is a positive development, but the widespread use of risk assessment tools also raises human rights concerns.

51. The fear is that highly political questions about the level of risk that society considers acceptable are hidden behind the veneer of technical design choices, that obscure algorithms disproportionally identify poor defendants as "high risk" by replicating the biased assumptions of previous human decision makers,[76] and that private contractors who develop risk assessment tools will refuse to divulge their content on the grounds that the information is proprietary, which leads to serious due process concerns affecting the civil rights of the poor in the criminal justice system.[77]

52. Solutions to major social challenges in the United States are increasingly seen to lie with privatization, especially in the criminal justice system. Bail bond corporations, which exist in only one other country in the world, precisely because they distort justice, encourage excessive and often unnecessary levels of bail, and lobby for the maintenance of a system that by definition penalizes the middle class and the poor.[78]

53. In some states, minor offences are routinely punished by placing the offender on probation, overseen by a for-profit corporation, entirely at the expense of the usually poor offender. Those who cannot pay are subject to additional fees, supervision and testing.[79] Similarly, in 26 states judges issue arrest warrants for alleged debtors at the request of private debt collectors, thus violating the law and human rights standards. The practice affects primarily the poor by subjecting them to court appearances, arrest warrants that appear on background checks, and jail time, which interfere with their wages, their jobs, their ability to find housing and more.[80]

D. Persistent discrimination and poverty

Race

54. The United States remains a chronically segregated society. Blacks are 2.5 times more likely than Whites to be living in poverty, their infant mortality rate is 2.3 times that of Whites, their unemployment rate is more than double that for Whites, they typically earn only 82.5 cents for every dollar earned by a White counterpart, their household earnings are on average well under two thirds of those of their White equivalents, and their incarceration rates are 6.4 times higher than those of Whites.[81] These shameful statistics can only be

[76] Written submission to the Special Rapporteur from Edward W. Felten and Bendert Zevenbergen, Princeton University.

[77] AI Now, "AI Now 2017 report".

[78] See, for example, www.hrw.org/report/2018/02/20/set-fail/impact-offender-funded-private-probation-poor.

[79] Human Rights Watch, *"Set up to Fail": The Impact of Offender-Funded Private Probation on the Poor* (2018).

[80] American Civil Liberties Union, "First-ever national report on widespread court practices that coerce payments from people in debt without due process", February 2018. See also American Civil Liberties Union, A Pound of Flesh: The Criminalization of Private Debt (2018).

[81] Economic Policy Institute, "50 years after the Kerner Commission" (26 February 2018). See also Fred Harris and Alan Curtis (eds.), *Healing Our Divided Society* (Temple University Press, 2018).

explained by long-standing structural discrimination on the basis of race, reflecting the enduring legacy of slavery.[82]

55. Ironically, politicians and mainstream media portrayals distort this situation in order to suggest that poverty in America is overwhelmingly Black, thereby triggering a range of racist responses and encouraging Whites to see poverty as a question of race. Too often the loaded and inaccurate message that parts of the media want to convey is "lazy Blacks sponge off hard-working Whites".

Gender

56. Women often experience the burdens of poverty in particularly harsh ways. Poor pregnant women who seek Medicaid prenatal care are subjected to interrogations of a highly sensitive and personal nature, effectively surrendering their privacy rights.[83] Low-income women who would like to exercise their constitutional, privacy-derived right to access abortion services face legal and practical obstacles, such as mandatory waiting periods and long driving distances to clinics. This lack of access to abortion services traps many women in cycles of poverty.[84] When a child is born to a woman living in poverty, that woman is more likely to be investigated by the child welfare system and have her child taken away from her.[85] Poverty is frequently treated as a form of "child neglect" and thus as cause to remove a child from the home,[86] a risk exacerbated by the fact that some states do not provide legal aid in child welfare proceedings.[87]

57. Racial discrimination makes matters even worse for many poor women. Black women with cervical cancer — a disease that can easily be prevented or cured — have lower survival rates than White women, due to later diagnosis and treatment differences,[88] owing to a lack of health insurance and regular access to health care. The United States has the highest maternal mortality ratio among wealthy countries, and black women are three to four times more likely to die than White women. In one city, the rate for Blacks was 12 times higher than that for Whites.[89]

58. In rural areas, women face significantly higher poverty rates, as well as related child poverty.[90] In economically depressed areas of the Midwest, rural Appalachia and the deep south unemployment is high and essential services, such as childcare, health care and grocery stores, are unavailable or difficult to access.[91] A lack of adequate public transport means that families are unable to access decent supermarkets and instead rely predominantly on expensive and poorly stocked local stores. In general, poor women and

[82] Center for American Progress, "Systematic inequality: how America's structural racism helped create the black-white wealth gap" (2018). See also Tommie Shelby, *Dark Ghettos: Injustice, Dissent and Reform* (Belknap Press, 2016).

[83] Khiara M. Bridges, *The Poverty of Privacy Rights* (Stanford University Press, 2017).

[84] Diana Greene Foster and others, "Socioeconomic outcomes of women who receive and women who are denied wanted abortions in the United States", *American Journal of Public Health*, vol. 108, No. 3 (March 2018), p. 407.

[85] Written submissions to the Special Rapporteur from National Advocates for Pregnant Women and the Center for Reproductive Rights.

[86] Maren K. Dale, "Addressing the underlying issue of poverty in child-neglect cases" (10 April 2014). Available at www.americanbar.org/aba.html.

[87] Written submission to the Special Rapporteur from National Advocates for Pregnant Women.

[88] Wonsuk Yoo and others, "Recent trends in racial and regional disparities in cervical cancer incidence and mortality in United States", *PLOS ONE*, vol. 12, No. 2 (February 2017).

[89] New York City Department of Health and Mental Hygiene, *Pregnancy-Associated Mortality: New York City, 2006–2010*. Available from www1.nyc.gov/assets/doh/downloads/pdf/ms/pregnancy-associated-mortality-report.pdf.

[90] See, for example, Southern Rural Black Women's Initiative for Economic and Social Justice, *Unequal Lives: The State of Black Women and Families in the Rural South*, p. 6.

[91] Lisa R. Pruitt and Janet L. Wallace, "Judging parents, judging place: poverty, rurality and termination of parental rights", *Missouri Law Review*, vol. 77 (2011), p. 117.

their children are more likely to be obese and suffer serious health issues and non-communicable diseases that hinder them for the rest of their lives.[92]

59. Female immigrants, who often suffer racial discrimination from employers and find it more difficult to get jobs, experience higher poverty rates and have much less access to social protection benefits than other women.[93] Undocumented women live a kind of half-life, in which they experience exploitation, abuse and wage theft, and are refused access to utilities such as water, but are unable to seek assistance or protection for fear of deportation.[94] While their undocumented status raises difficult legal and policy questions, their shadow existence as mothers of United States citizens and as domestic, sex or other workers undermines their ability to live a life in dignity. Even many permanent residents who have lived in the United States for less than five years are excluded from coverage under the Affordable Care Act[95] and assistance such as the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families programme and housing benefits.[96]

60. Lack of Internet connectivity in rural impoverished communities negatively affects access to social protection benefits, other government services and even employment.[97] In West Virginia, where an estimated 30 per cent of the population lack access to high speed broadband (compared to 10 per cent nationally) and 48 per cent of rural West Virginians lack such access (compared to 39 per cent of the rural population nationally), [98] the government has no serious plans to improve access.

Indigenous peoples

61. The Special Rapporteur heard testimonies from Chiefs and representatives of federally recognized and non-recognized tribes on widespread extreme poverty in their communities. Indigenous peoples, as a group, suffer disproportionately from multidimensional poverty and social exclusion. The 2016 poverty rate among American Indian and Alaska Native peoples was 26.2 per cent, the highest among all ethnic groups.[99] Indigenous peoples also have the highest unemployment rate of any ethnic group: 12 per cent in 2016, compared to the national average of 5.8 per cent.[100] One in four indigenous young people aged 16 to 24 are neither enrolled in school nor working.[101]

62. Disparities between indigenous and non-indigenous health status have long been recognized but not effectively addressed. American Indians and Alaska Natives face almost a 50 per cent higher death rate than do non-Hispanic White people, due to illnesses such as heart disease, cancer, chronic liver disease and diabetes.[102] Poverty, unemployment, social

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92 See, for example, Southern Rural Black Women's Initiative for Economic and Social Justice, *Unequal Lives*.

93 See www.migrationpolicy.org/article/immigrant-women-united-states#Poverty.

94 Written submission to the Special Rapporteur from the Miami Workers Center and others on the feminization of poverty in Miami; Azadeh Shahshahani and Kathryn Madison, "No papers? You can't have water: a critique of localities' denial of utilities to undocumented immigrants", *Emory International Law Review*, vol. 31, No. 4 (2017).

95 Samantha Artiga and Anthony Damico, Health Coverage and Care for Immigrants, issue brief (The Henry J. Kaiser Family Foundation, 2017).

96 See, for example, the submission from the Miami Workers Center and others, and Shahshahani and Madison, "No papers?".

97 See, for example, the written submission to the Special Rapporteur from Access Now. Broadband access is also seriously lacking in the South (Southern Rural Black Women's Initiative for Economic and Social Justice, *Unequal Lives*, p. 16).

98 West Virginia Center on Budget and Policy and American Friends Service Committee, *2016 State of Working West Virginia: Why is West Virginia so Poor?*, p. 55.

99 United States Census Bureau, "American Indian and Alaska Native Heritage — Month: November 2017". Available at www.census.gov/content/dam/Census/newsroom/facts-for-features/2017/cb17-ff20.pdf.

100 The Aspen Institute, *2017 State of Native Youth Report: Our Identities as Civic Power*, p. 33.

101 Ibid., p. 37.

102 David Espey and others, "Leading causes of death and all-cause mortality in American Indians and Alaska Natives", *American Journal of Public Health* (June 2014), vol. 104, No. S3.

exclusion and loss of cultural identity also have significant mental health ramifications and often lead to a higher prevalence of substance abuse, domestic violence and alarmingly high suicide rates in indigenous communities, particularly among young people. Suicide is the second leading cause of death among American Indians and Alaska Natives aged between 10 and 34.[103]

63. In entering a "trust relationship" with the recognized tribes, the Government assumed duties to provide for economic and social programmes to ensure the welfare of the relevant indigenous groups.[104] But their very high poverty rates attest to the Government's failure in this respect. Chronic underfunding of the relevant federal government departments is a significant part of the problem.[105] The situation has also been compounded by paternalistic attitudes, [106] which run directly counter to the approach reflected in international human rights law and standards, particularly the United Nations Declaration on the Rights of Indigenous Peoples, which the Government endorsed in 2010.

64. The situation of non-federally recognized tribes is even more desperate, for they are not eligible to benefit from federally funded programmes. While 567 tribes are federally recognized, some 400 are not.[107] The latter exist in a context in which their way of life is not legally sanctioned, they are disempowered and their culture is threatened. Failure to collect disaggregated data for those tribes also hinders the development of evidence-based policies to address their situation.

E. Confused and counterproductive drug policies

65. The opioid crisis has devastated many communities, and the addiction to pain-control opioids often leads to heroin, methamphetamine and other substance abuse. Instead of responding with increased funding and improved access to vital care and support, the federal Government and many state governments have instead mounted concerted campaigns to reduce and restrict access to health care by the poorer members of the population.[108]

66. In terms of welfare, the main responses have been punitive. States increasingly seek to impose drug tests on recipients of welfare benefits, with programmes that lead to expulsion from the programme for repeat offenders. Others have introduced severe punishments for pregnant women who abuse drugs. Medical professionals recognize that such policies are counterproductive, highly intrusive and misplaced. The urge to punish rather than assist the poor often also has racial undertones, as in the contrast between the huge sentences handed down to those using drugs such as crack cocaine (predominantly Black) and those using opioids (overwhelmingly White).

F. Environmental pollution

67. Poor rural communities throughout the United States are often located close to polluting industries that pose an imminent and persistent threat to their human right to

[103] Centers for Disease Control and Prevention, Leading Causes of Death Reports, 1981–2016.

[104] See www.acf.hhs.gov/ana/resource/american-indians-and-alaska-natives-the-trust-responsibility.

[105] See, for example, United States Government Accountability Office, *Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, report to congressional committees (February 2017). Available at https://www.gao.gov/assets/690/682765.pdf.

[106] See A/HRC/21/47/Add.1, para. 15.

[107] United States Government Accountability Office, *Federal Funding for Non-Federally Recognized Tribes* (April 2012). Available at www.gao.gov/assets/600/590102.pdf.

[108] See, for example, Debra E. Houry, Tamara M. Haegerich and Alana Vivolo-Kantor, "Opportunities for prevention and intervention of opioid overdose in the emergency department", *Annals of Emergency Medicine* (2018).

health.[109] At the same time, poor communities benefit very little from these industries, which they effectively subsidize because of the low tax rates offered by local governments to the relevant corporations.

68. Poor communities suffer especially from the effects of exposure to coal ash, which is the toxic remains of coal burned in power plants. It contains chemicals that cause cancer, developmental disorders and reproductive problems,[110] and is reportedly dumped in about 1,400 sites around the United States — 70 per cent of which are situated in low-income communities.[111] In Puerto Rico, the Special Rapporteur visited Guayama, where poor communities live close to a plant owned by Applied Energy Systems (AES) that produces coal ash. Community members noted severe negative impacts on their health and economic activities; neither federal nor local authorities had taken action. In March 2018 the Environmental Protection Agency proposed a new rule that would significantly undermine existing inadequate protections against coal ash disposal.

69. In Alabama and West Virginia, a high proportion of the population is not served by public sewerage and water supply services. Contrary to the assumption in most developed countries that such services should be extended by the government systematically and eventually comprehensively to all areas, neither state was able to provide figures as to the magnitude of the challenge or details of any planned government response.

VII. Conclusions and recommendations

70. **The following analysis focuses primarily on the federal level. It is nonetheless ironic that those who fight hardest to uphold state rights also fight hard to deny city and county rights. If the rhetoric about encouraging laboratories of innovation is to be meaningful, the freedom to innovate cannot be restricted to state politicians alone.**

1. Decriminalize being poor

71. **Punishing and imprisoning the poor is the distinctively American response to poverty in the twenty-first century. Workers who cannot pay their debts, those who cannot afford private probation services, minorities targeted for traffic infractions, the homeless, the mentally ill, fathers who cannot pay child support and many others are all locked up. Mass incarceration is used to make social problems temporarily invisible and to create the mirage of something having been done.**

72. **It is difficult to imagine a more self-defeating strategy. Federal, state, county and city governments incur vast costs in running jails and prisons. Sometimes these costs are "recovered" from the prisoners, thus fuelling the latter's cycle of poverty and desperation. The criminal records attached to the poor through imprisonment make it even harder for them to find jobs, housing, stability and self-sufficiency. Families are destroyed, children are left parentless and the burden on governments mounts. But because little is done to address the underlying causes of the original problem, it continues to fester. Even when imprisonment is not the preferred option, the standard response to those facing economic hardship is to adopt policies explicitly designed to make access to health care, sick leave and welfare and child benefits more difficult to access and the receipt of benefits more stigmatizing.**

73. **A cheaper and more humane option is to provide proper social protection and facilitate the return to the workforce of those who are able. In the United States, it is poverty that needs to be arrested, not the poor simply for being poor.**

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[109] Bill Chameides, "A look at environmental justice in the United States today," Huffington Post Blog, 20 January 2014. Available at www.huffingtonpost.com/bill-chameides/a-look-at-environmental-j_b_4633223.html.

[110] Earthjustice, "Fighting for protections from coal ash". Available at https://earthjustice.org/our_work/cases/2012/legal-fight-for-long-overdue-coal-ash-protections.

[111] Oliver Milman, "A civil rights 'emergency': justice, clean air and water in the age of Trump", *The Guardian*, 20 November 2017.

2. Acknowledge the plight of the middle class

74. Only 36 per cent of Republican voters consider that the federal Government should do more to help poor people, and 33 per cent believe that it already does too much.[112] The paradox is that the proposed slashing of social protection benefits will affect the middle classes every bit as much as the poor. Almost a quarter of full-time workers, and three quarters of part-time workers, receive no paid sick leave. Absence from work due to illness thus poses a risk of economic disaster. About 44 per cent of adults either could not cover an emergency expense costing $400 or would need to sell something or borrow money to do it. Over a quarter of all adults are classified as having no access or inadequate access to banking facilities.[113] The impacts of automation, artificial intelligence and the increasing fluidity of work arrangements mean that employer-provided social protection will likely disappear for the middle classes in the years ahead. If this coincides with dramatic cutbacks in government benefits, the middle classes will suffer an ever more precarious economic existence, with major negative implications for the economy as a whole, for levels of popular discontent and for political stability.

3. Acknowledge the damaging consequences of extreme inequality

75. The United States already leads the developed world in income and wealth inequality, and it is now moving full steam ahead to make itself even more unequal. But this is a race that no one else would want to win, since almost all other nations, and all the major international institutions, such as OECD, the World Bank and IMF, have recognized that extreme inequalities are economically inefficient and socially damaging. The trajectory of the United States since 1980 is shocking. In both Europe and the United States, the richest 1 per cent earned around 10 per cent of national income in 1980. By 2017 that had risen slightly in Europe to 12 per cent, but massively in the United States, to 20 per cent. Since 1980 annual income earnings for the top 1 per cent in the United States have risen 205 per cent, while for the top 0.001 per cent the figure is 636 per cent. By comparison, the average annual wage of the bottom 50 per cent has stagnated since 1980.[114]

76. The problem is that "inequality" lacks salience with the general public, who have long been encouraged to admire the conspicuous, and often obscene, consumption of billionaires and celebrities. What extreme inequality actually signifies is the transfer of economic and political power to a handful of elites who inevitably use it to further their own self-interest, as demonstrated by the situation in various countries around the world. While the poor suffer, so too do the middle class, and so does the economy as a whole. High inequality undermines sustained economic growth. It manifests itself in poor education levels, inadequate health care and the absence of social protection for the middle class and the poor, which in turn limits their economic opportunities and inhibits overall growth.

77. Extreme inequality often leads to the capture of the powers of the State by a small group of economic elites. The combined wealth of the United States Cabinet is around $4.3 billion. As noted by Forbes: "America's first billionaire president has remained devoted to the goal of placing his wealthy friends in his Cabinet, a top campaign promise."[115] And many regulatory agencies are now staffed by "political appointees with deep industry ties and potential conflicts".[116] Extreme inequality thus

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[112] Pew Research Center, "Majorities say Government does too little for older people, the poor and the middle class" (2018). Available at http://assets.pewresearch.org/wp-content/uploads/sites/5/2018/01/30104502/01-30-18-groups-release.pdf.

[113] Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2016* (May 2017).

[114] Facundo Alvaredo and others, coordinators, *World Inequality Report 2018*, (World Inequality Lab).

[115] Chase Peterson-Withorn, "The $4.3 billion Cabinet: see what each top Trump advisor is worth," *Forbes*, 5 July 2017.

[116] D. Ivory and R. Faturechi, "The deep industry ties of Trump's deregulation teams", *New York Times*, 11 July 2017.

poses a threat not just to economic efficiency but to the well-being of American democracy.

4. Recognize a right to health care

78. **Health care is, in fact, a human right. The civil and political rights of the middle class and the poor are fundamentally undermined if they are unable to function effectively, which includes working, because of a lack of the access to health care that every human being needs. The Affordable Care Act was a good start, although it was limited and flawed from the outset. Undermining it by stealth is not just inhumane and a violation of human rights, but an economically and socially destructive policy aimed at the poor and the middle class.**

5. Get real about taxes

79. **At the state level, the demonizing of taxation means that legislatures effectively refuse to levy taxes even when there is a desperate need. Instead they impose fees and fines through the back door, some of which fund the justice system and others of which go to fund the pet projects of legislators. This sleight-of-hand technique is a winner, in the sense that the politically powerful rich get to pay low taxes, while the politically marginalized poor bear the burden but can do nothing about it. There is a real need for the realization to sink in among the majority of the American population that taxes are not only in their interest, but also perfectly reconcilable with a growth agenda. A much-cited IMF paper concluded that redistribution could be good for growth, stating: "The combined direct and indirect effects of redistribution — including the growth effects of the resulting lower inequality — are on average pro-growth."**[117]

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[117] Jonathan Ostry, Andrew Berg and Charalambos G. Tsangarides, *Redistribution, Inequality, and Growth*, IMF Staff Discussion Note (IMF, 2014), p. 4.